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ABSTRACT

Focusing on adjudication manpower (judges, prosecutors, public defenders, court administrators, and probation officers), this document is one in a series of six volumes reporting the results of the National Manpower Survey (NMS) of the Criminal Justice System. Chapter 1 of six chapters summarizes the major results and recommendations of an assessment of the court adjudication agencies. Chapter 2 describes the criminal justice process today and the respective roles of each of these categories of agencies and their key personnel. Current employment in each category, agency workloads, and manpower needs are also discussed. Chapter 3 presents the projection of future personnel needs of state and local criminal justice agencies, by occupation, for a ten-year period (to 1985). Chapter 4 reviews NMS findings on recent personnel turnover and tenure among assistant prosecutors and defenders, on factors contributing to the relatively high turnover in these positions, and on the implications of these patterns for future recruitment needs. Chapter 5 describes the historical development of legal education and training programs and discusses key issues related to the adequacy and quality of current programs. The final chapter reviews the role and functions of court administrators, provides a profile of existing incumbents in terms of training and experience, and assesses training and education needs for current and future incumbents of these positions. (BM)

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The National Manpower Survey of the Criminal Justice System

Volume Four
Courts

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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September 1978

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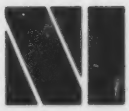

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National Institute of Law Enforcement and
Criminal Justice
Blair G. Ewing, Acting Director

Law Enforcement Assistance Administration
James M.H. Gregg, Acting Administrator

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FOREWORD

The criminal justice system is a labor-intensive enterprise, vital to the nation and beset with manpower problems. One of the most recent attempts to help alleviate some of the problems was the National Manpower Survey. The Congressional mandate for this survey was written in 1973, the survey was begun in 1974 and completed last year.

This volume deals specifically with adjudication manpower: judges, prosecutors, public defenders, court administrators, and probation officers. Recruitment, retention, training education, manpower resources and projections, and analysis of the major effects of criminal justice issues and trends are discussed.

The survey results do not provide final answers to all of the manpower issues. In particular, the assumptions built into the model for projecting manpower requirements may have to be modified in light of additional experience. Nevertheless, the Institute believes the study represents a significant advance in the tools available to deal with manpower problems. We hope it will be of value to the many hundreds of state and local officials who must plan for manpower needs.

BLAIR G. EWING
Acting Director
National Institute of Law Enforcement
and Criminal Justice

PREFACE

The National Manpower Survey of the Criminal Justice System is an LEAA-funded study conducted in response to a Congressional requirement, under the 1973 Crime Control Act, for a survey of personnel training and education needs in the fields of law enforcement and criminal justice, and of the adequacy of federal, state, and local programs to meet these needs.

This volume on courts personnel is one of a series of eight volumes (listed below) which comprise the full report of the National Manpower Survey. The overall scope of the study, including descriptions of methodology and data sources, are included in the Summary Report (Volume I) and—in more detail—in Volumes VI, VII, and VIII. An extensive analysis of courts education and training programs is included in Volume V, and supplements the training and educational needs assessments included in the present volume.

The six volumes published under this study are:

- Volume I (Summary Report)
- Volume II (Law Enforcement)
- Volume III (Corrections)
- Volume IV (Courts)
- Volume V (Education and Training)
- Volume VI (Manpower Planning)

ACKNOWLEDGMENTS

This study was made possible by the active cooperation of many thousands of judicial officials, prosecutors and defenders who took time from their busy schedules to respond to the mailed questionnaires of the National Manpower Survey, or to meet with our field representatives.

Our staff also benefitted greatly from the advice and counsel of a large number of leading members of the practitioner, academic and research community, concerned with problems of legal and judicial manpower and training, who assisted us in identifying key issues and research sources. These included members of the NMS Advisory Board and of an NMS Panel on Law School and Continuing Legal Education, as well as the following individuals.

John Ackerman, Dean, National College of Criminal Defense Lawyers and Public Defenders
Dennis Catlin, Office of Court Administrator, Michigan
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Millard Rudd, Association of American Law Schools
David Saari, The American University
Susan Welch, Federal Judicial Center
Paul Wolkin, Joint Committee of the American Law Institute, American Bar Association

The responsibility for conducting the analyses and preparing the materials included in this report fell primarily upon the following members of the research staff of the National Planning Association:

Manpower sections: Harry Greenspan, Bernard Gilman and Linda Harris
Training and Education sections: Neal Miller

This study was conducted under the general direction of Harold Wool, Project Director and Frank McKernan, Deputy Project Director. Harold Wool was also responsible for preparation of the final report.

Finally, we are especially indebted to our senior administrative and research support staff members, Lorraine Halsey and Elizabeth McGovern, who respectively provided the research administration and library reference services for the study, as well as the following members of our secretarial staff: Margaret Takenaka, Lorraine Staliper, Cynthia Payne and Jacqueline Rupel.

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CHAPTER I. EXECUTIVE SUMMARY

A. Current Manpower Assessment

- *Court systems manpower needs must be assessed in relation to the two major goals of the judicial process: equity and efficiency.* Equity and "due process" considerations have been reflected in pressures for procedural improvements, for increased provision of indigent defense services, for reduced reliance upon plea bargaining, and related changes. Efficiency considerations have been reflected, particularly, in efforts to reduce case backlogs and case delay. Both goals have important implications for manpower needs of judicial process agencies.
- *Based on available indicators, the overall growth in crime-related workloads of judicial process agencies in 1970–74 was at a slower rate than during the period 1965–70.* The slowdown was, however, primarily limited to the number of charges for Part II offenses and of juvenile delinquency cases, which rose by an average of only 2 percent annually during this period, as compared to an average increase of 8 percent per year, in number of persons charged with Part I offenses.
- *Total employment in state and local judicial process agencies rose more rapidly between 1970 and 1974 than the growth in these crime-related workloads.* Overall employment in court, prosecution and indigent defense agencies rose by 38 percent or by 9 percent annually, paced by particularly sharp growth rates in both indigent defense and prosecution/legal service agencies. Increases in civil as well as criminal caseloads, requirements for increased provision of indigent defense services under recent Supreme Court decisions, and increased public pressures to reduce court delay were major contributing factors.
- *Despite improved staffing, felony case backlogs and civil case backlogs in courts of general jurisdiction increased by 10 percent and 13 percent, respectively, in fiscal year 1975, based on an NMS survey of these courts.* The estimated average period of additional time needed to process felony case backlogs, of about six months, can be contrasted with norms of 60 days to 90 days for total elapsed time from initial filing to trial, under most state speedy trial laws.
- *Although many court administrators surveyed by the NMS identified insufficient judicial personnel as an important factor contributing to case delay, they placed at least equal emphasis upon procedural problems, such as continuance policies, and on various personnel interaction factors.* Hence authorization for additional judges and other court personnel may be a necessary—but not sufficient—condition for reducing case delay in many court systems.
- *Analysis of prosecution agency caseloads, as well as responses by chief prosecutors concerning their manpower needs, indicate substantial needs for additional full-time staff attorneys, particularly in larger agencies.* "Felony equivalent" caseloads per full-time prosecutor were nearly twice as great in larger agencies, with 10 or more employees than in offices with less than 5 employees. A majority of small offices continue to rely upon part-time prosecutors, despite previous recommendations for consolidation of such offices, to permit use of full-time prosecutors.
- *Estimates of additional manpower needs of public defender offices vary widely, depending upon the criteria used.* Public defenders responding to the NMS indicated that a moderate overall increase, of about 18 percent, in staff attorneys would enable them to fully comply with recent Supreme Court requirements. Analysis of caseload data for a sample of these agencies indicated a requirement for an increase of more than 28 percent to meet the standards recommended by the National Advisory Commission on Criminal Justice Standards and Goals. However, a broader assessment of total indigent defense manpower needs, based on criteria applied by the National Legal Aid and Defenders Association, resulted in an estimated need for a six-fold increase in total defender staffing.

B. The Manpower Outlook

- *Total judicial process employment in full-time equivalent, is expected to increase by 62 percent, from 175,000 in 1974 to 283,000 in 1985.* This rate of growth, although greater than that projected for other major criminal justice sectors, is significantly lower than that experienced in the early 1970's. The annual rate of employment growth is expected to decline from 7.8 percent in 1971–74 to 5.3 percent in 1974–80 and 3.5 percent in 1980–85, due to the combined effect of fiscal constraints and a projected slowdown in crime rates.
- *Employment growth in court agencies will be more rapid in general jurisdictions and appellate-level courts, than in limited or special jurisdiction courts.* Key factors contributing to slower employment growth in the lower courts are the trend towards decriminalization of certain categories of offenses, such as public drunkenness; the anticipated reduction in juvenile caseloads as a result of the projected decline in the teenage population and the continued movement towards consolidation or unification of lower level courts. Employment growth in courts will be greater for administrative and support personnel, than for judges, based on recent trends.
- *Prosecutor and legal services agencies are expected to grow more rapidly at the state, than local levels, between 1974 and 1985.* As compared with an overall projected employment growth rate of 5.1 percent annually, state offices are expected to increase by 6.8 percent annually, and local offices, at a rate of 4.5 percent. Increases in civil legal functions, as well as an expanded state role in criminal prosecutions, are important contributing factors.
- *Total indigent defense employment including both public and contract agencies, is projected to almost double by 1985.* This, however, implies a substantial slowdown in rate of growth, as compared to the 1971–74 period, as the number of defender agencies stabilizes. Growth is expected to be much more rapid for personnel in contract agencies, than those on public payrolls, based on recent trends.
- *The above projections were based on projections of major economic and demographic trends affecting crime rates and criminal justice expenditure levels, and on assumed continuation of more specific trends in major categories of agencies, based on 1971–74 experience.* The projections are subject to considerable margins of uncertainty, both because of the limited data base and because it is not possible to fully anticipate policy and organizational developments which may affect future manpower needs. These include—for example—the trend to decriminalization of certain "victimless" offenses, pre-trial diversion programs, revisions of plea bargaining procedures and the movement to court reorganization and consolidation.
- *Arrests for certain victimless crimes, such as public drunkenness, have declined significantly since 1970, and this trend is expected to continue.* This trend is expected to reduce workloads in lower-level courts, but to have a very limited impact on manpower needs in other judicial process agencies, which do not process most of these cases.
- *Formal pre-trial diversion programs are used in most larger jurisdictions, and are expected to increase in importance.* About 40 percent of prosecutors, and 34 percent of probation and parole office heads, reported such programs in their jurisdiction, and further growth is expected. The net effect upon agency workloads and staffing needs of these programs has, however, been limited to date.
- *Despite recent recommendations for elimination, or reform, of plea bargaining practices, these continue to be extensively used and only a limited reduction is expected by prosecutors and public defenders.* About one-half of prosecutors and defenders reported that more than 60 percent of their cases were disposed of through plea bargaining. Nearly 8 out of 10 of all prosecutors expect no change in current practices. However about 30 percent of heads of larger prosecution offices—with 25 or more employees—anticipate reduced reliance upon plea bargaining. The systems-wide implications of this trend need further study.
- *The trend towards court unification and consolidation appears to have made possible significant economies in total judicial manpower needs.* States with high degree of lower-court unification increased judicial employment by only 15 percent between 1971 and 1974 as contrasted to an increase of 26 percent among states with lowest degree of unification. This trend, at the same time, has stimulated increased employment of court administrators, as well as of supporting technical and administrative staffs.

C. Recruitment and Retention

- *High chronic personnel turnover rates among assistant prosecutors and defenders, prior to the recent economic recession, have adversely affected staff experience levels and capabilities.* Voluntary resignation rates of staff attorneys averaged 22 percent in fiscal year 1974; recruitment rates exceeded 30 percent. Most entrants into these positions are recent law school graduates—only about one-fifth had prior trial experience. Over 60 percent of all assistant prosecutors and defenders had less than four years of service in their agency.
- *Personnel turnover was substantially reduced in 1975–76 based on NMS reports.* Prosecution and defender agencies visited by NMS staff in 1975–76 indicated no current significant recruitment or turnover problems, reflecting the poor labor market for recent law school graduates. This may, however, be a temporary situation, since the longer-range outlook is for continued employment growth for lawyers, both in the public and private sectors.
- *Major factors reported as contributing to high past turnover rates have been inadequate salaries, excessive workloads and desire for broader legal experience.* Inadequate salaries were most frequently cited by both prosecutors and defenders as the most important factor contributing to high staff resignation rates. Public defenders, however, placed greater emphasis on other job-related factors, such as excessive workloads and limited promotional opportunities than did the prosecutors.
- *Entering salaries of assistant prosecutors and defenders in 1975 were substantially below those for attorneys in private employment.* Average entering salaries were $12,433 in prosecution agencies and $13,761 in public defender offices, based on NMS surveys, as compared with an average entering salary of $15,000 in private employment. The higher defender salary is probably due to the greater concentration of public defender offices in larger metropolitan areas.
- *Average annual recruitment needs for assistant prosecutors and defenders are projected to remain close to recent (1974) levels for the period 1974–80, but to increase significantly during 1980–85.* This projection allows for a moderate reduction in resignation rates during 1974–80, as a result of depressed labor market conditions, but assumes an improved labor market—and a resulting increase in turnover—in the period 1980–85.

D. Legal Education and Training

1. *Law school education.*

- *Although as many as one-third of all lawyers may engage in some criminal law practice in the course of their careers, undergraduate law school programs provide a limited educational foundation in procedural and institutional aspects of criminal law practice and related criminal justice issues.* Limited opportunities for criminal justice specialization, or for acquisition of trial skills, are provided by most law schools, in view of their emphasis on broad principles of law and on development of basic legal analytical skills. Despite some increase in course offerings, criminal justice courses accounted for only 6.8 percent of total law school course offerings in 1975.
- *Assessments by prosecutors and defenders confirm the inadequate preparation of law school graduates in procedural and trial advocacy skills.* About 7 out of 10 chief prosecutors and defenders considered law school graduates inadequately prepared in these skills, whereas nearly 30 percent considered them adequately prepared in such projects as constitutional law.
- *Judges, prosecutors and defenders interviewed by NMS also consistently rated law schools as the least useful source of preparation for most of their critical responsibilities, as compared to on-the-job experience or formal training courses.* Newly recruited personnel were considered as deficient in nearly all major applied legal or judicial skill areas needed for criminal justice positions.
- *Clinical law programs, now offered by a large majority of law schools, are designed to supplement formal course offerings, by providing needed operational skills and exposures.* Over one-half of chief prosecutors and defenders give hiring preference to law students with clinical law experience. However, only about one-fifth of recent graduates have completed such programs, and a much smaller percent did so in criminal justice agencies.
- *Major proposed improvements in law school programs, from the standpoint of needs of criminal justice agencies, include:* (1) increased emphasis on closely supervised clinical programs in an operational setting; (2) curriculum

revisions to place greater emphasis on practical legal skills; and (3) improved faculty and institutional linkages with criminal justice agencies.

2. *Entry-level training for assistant prosecutors and defenders.*

- *About one-half of all prosecution and public defender offices—and much larger proportions of the larger agencies—provided formal entry-level training to new staff attorneys in 1975, according to NMS surveys.* The proportion of agencies providing such training varied directly with size, from nearly 80 percent of prosecution offices with 25 or more staff attorneys, to 47 percent for those with less than 5. Smaller offices mainly relied on external providers for such training, whereas about three-fourths of the largest offices conducted their own programs.
- *The growth of statewide training programs for prosecutors has been a major factor in the increased availability of such training, particularly for smaller offices.* According to one recent study, about 29 states had statewide training programs in 1975, nearly all with the support of LEAA funding. However, the limited frequency of such courses is one major drawback.
- *Entry level course lengths are relatively short, typically less than two weeks in duration.* Only about 15 percent of all courses reported were two weeks or longer, indicating continued primary reliance by most agencies on on-the-job training and progressive assignments for acquisition of needed operational skills.
- *Despite considerable recent progress, the available data suggest that over one-fourth of newly recruited assistant prosecutors and defenders, without prior trial experience, still receive no formal entry training other than brief orientation sessions of one day or less.* The need appears to be greatest in the smaller agencies which also are least capable of providing systematic on-the-job training to their personnel.

3. *In-service training for assistant prosecutors and defenders.*

- *Although a large majority of agencies provide some assistance to their staff attorneys for external continuing legal education, only about one-third have policies requiring participation in such programs.* About two-thirds of prosecutor offices, and three-fourths of defender offices provided assistance for continuing legal education (CLE) in the form of administrative leave, tuition support or other means. Only about 30 percent of the prosecutor offices, and 33 percent of the defender offices required participation in such training.
- *Major providers of external CLE include the national level colleges or organizations for prosecutors and defenders, and state-level programs operated by state prosecutor or attorney general offices, or state defender offices.* Courses offered by the National District Attorneys Association and National College of District Attorneys were most frequently cited by prosecutors. Similarly, the National College of Criminal Defense Lawyers and Public Defenders was the single most important source for defenders.
- *Course contents of in-service training programs generally parallel those for entry-level programs.* However, basic procedural subjects tend to be more frequently included in entry-level courses, while subjects such as trial advocacy or appellate advocacy are more frequently covered in in-service programs.
- *The need for continued improvement in both availability and quality of training programs is indicated by the NMS survey responses.* Nearly one-half of chief prosecutors and defenders expressed varying degrees of dissatisfaction with their existing agency programs; only about one-tenth indicated a high degree of satisfaction.

4. *Training for chief prosecutors and defenders.*

- *Training needs for chief prosecutors and defenders vary significantly, by size of agency.* Major responsibilities of heads of small offices relate to preparation, supervision and review of legal cases. Management and policy roles are more significant in the case of heads of larger offices—and are the tasks for which they are often least prepared, in terms of prior education and experience.
- *A majority of both chief prosecutors and defenders have taken some specialized training in their field.* "Omnibus" courses, such as those offered by the national colleges for prosecutors and defenders or by state agencies, had been attended by 56 percent of the prosecutors and 61 percent of the defenders responding to the NMS.
- *Significant training "gaps"—between courses recommended and courses actually taken—*

were identified by the NMS. Most needed additional training courses include both specialized professional subjects, such as law of evidence, trial advocacy and juvenile law, and broader interdisciplinary courses on community relations, human relations and management.

5. *Judicial training.*

- *Despite the limited preparation of most newly appointed or elected judges in criminal trial procedures and related judicial tasks, less than one-half of all states provide entry training to new judges, and only a small number mandate such training.* Only 24 out of 51 jurisdictions (including the District of Columbia) provide formal entry training for general jurisdiction court judges, and only 19, for limited jurisdiction court judges. Only seven states require entry training for all new judges.
- *"On-the-job" orientation is provided through use of senior judges as advisors to new judges in a number of states.* At least 13 states have established such procedures, including arrangements for initial observation periods for new judges prior to conducting their own trials. Other states provide for formal orientation or training sessions during the course of the incumbents' first year on the bench.
- *One of the most serious judicial training gaps is the absence of adequate provision of entry-level training to lay judges in a number of states.* Although the use of lay judges in criminal proceedings is authorized in 38 states, only 26 states provided some systematic entry training to lay justices of the peace, by state attorney generals or a judicial association, in 1976. Such training is mandated in only 22 of these states and is often of short duration. Supporting educational or training materials, such as bench books, are only provided by about one-third of the states.
- *In service training programs are provided for judges by virtually all states, to some degree.* A majority of states use a combination of national-level and state programs. Almost all states receive some form of LEAA funding assistance for such programs.
- *National-level programs continue to be the most important sources of judicial training.* These include the National College of State Trial Judges, the American Academy of Judicial Education, the National College for Juvenile Justice and appellate judge training programs offered by the ABA and the Institute for Judicial Administration.
- *The quality and scope of state judicial training programs varies widely.* State sponsored programs range from "adjunct" training sessions, as part of annual or semi-annual jurisdicial conferences, or a single annual week-end session devoted to training, to comprehensive training programs operated by state judicial colleges in a number of the larger states.
- *Supporting training services for judges, such as bench books, manuals and evidence guides are important adjuncts to formal training sessions, but have been adequately developed in only a few states, such as California.* These meet a particularly critical need, due to the limited availability of most judges for longer residential training programs.

E. Court Administrator Training

- *A total of 455 court administrators were reported as employed in state and local courts based on an NMS survey of state offices responsible for court administration.* Of these, 334, or 73 percent, provided detailed information on their functions, background and training needs, in response to an NMS questionnaire survey. About two thirds of these positions had been established since 1970.
- *Two distinct categories of court administrators were identified by the survey: those with broad managerial responsibilities for court operations and non-judicial personnel resources, and those with primarily clerical and administrative duties.* The key distinctions between the two positions are the degree of control over resources and personnel, and the ability to initiate or implement major organizational or policy changes.
- *Lack of sufficient authority was identified as a significant problem by 30 percent of all court administrators.* Roles of state court administrators depend, in large part, on the degree of unification or consolidation of state court systems. Among trial court administrators, the extent to which administrators have professional staff assistants provided a useful index of the scope of their position. Only 19 percent of those without professional staff performed the full range of court administrator functions, as compared to 42 percent of those with professional staff.

- *Educational backgrounds of court administrators vary widely, depending on the scope of their responsibilities.* All state court system administrators were college graduates, over 80 percent with law degrees. In contrast, 25 percent of the trial court administrators with professional staff, and 52 percent without professional staff, were not college graduates.
- *About one half of court administrators reported previous work experience in court agencies, mainly in administrative positions.* Court administrators whose functions were more clerically oriented were more likely to have had experience in such positions as Clerk of Court or deputy clerk. Professional management-oriented administrators were more likely to have had backgrounds in law and in public or business administration.
- *The emergence of the court administrator as a professional field has resulted in establishment of specialized court administration training programs at both the national and state levels, with LEAA support.* These include national level programs offered by the Institute for Court Management, the National Association of Court Administrators, the National College of the State Judiciary and the Institute for Judicial Administration and state-level programs offered by state court administrators' offices or state judicial conferences and university-related centers for continuing education.
- *Although only about one-fourth of court administrators had completed a special program of study in judicial administration prior to entering their current position, nearly 80 percent had received some specialized training since entering the field.* Major training sources reported were the Institute of Court Management, state agency programs and those of the National Association of Trial Court Administrators.
- *Academic qualifications considered most useful for entry into court administration by administrators, were management science, law or public administration.* State court administrators—mainly lawyers—indicated a strong preference for legal training; trial court administrators gave higher priority to management-related studies.
- *Training courses in caseflow management and court information systems were most frequently recommended.* Course preferences varied, depending upon the scope of responsibility of court administrators. State court systems administrators gave top priority to training in court information systems; trial court administrators, to caseflow management. Training in personnel administration, budget and fiscal management, and program planning and evaluation was also recommended by two-thirds or more of all respondents.

F. Major Recommendations

1. *Personnel.*
   - *Increases in the number of judges, prosecution and defense attorneys, and of supporting staffs, are needed in many jurisdictions to reduce excessive case backlogs and to meet acceptable performance standards.*
   - *Improved utilization of existing personnel is equally essential, through such measures as court reorganization, court procedural reforms, consolidation of small prosecution or defender offices, and pretrial diversion programs.*
   - *Increased salaries for experienced prosecution and defense attorneys are needed to retain competent staff for longer-term commitments and to reduce costly personnel turnover.*

2. *Legal education.* Preparation of undergraduate law students for criminal justice-related positions can be improved through:
   - *Expanded clinical programs with criminal justice agencies.*
   - *Curriculum revisions, providing a broader range of criminal justice court offerings, with increased emphasis on both applied legal skills and interdisciplinary courses.*
   - *Increased linkages between law school faculties and operational criminal justice agencies.*

3. *Training.*
   - *Entry-level training of acceptable length and quality should be mandatory for new prosecution and defense staff without adequate prior experience, and for all new judges (including lay judges).*
   - *Increased support is needed for graduate, preservice education in court administration, to provide an increased source of professionally qualified court administrators.*
   - *There is a need for improved articulation between national-level and state-level in-service training or continuing education programs for judges, prosecutors and defenders.*
   - *Increased emphasis should be placed upon provision of educational services and materials, such as bench books for judges, to complement formal training sessions.*

CHAPTER II. CURRENT MANPOWER ASSESSMENT

A. Introduction

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals reported:

> The court system in the United States is in serious difficulty. There are too many defendants for the existing system to handle effectively and efficiently. Backlogs are enormous. Workloads are increasing. [In responding to these problems] first priority . . . should be given to speed and efficiency in achieving final determination of guilt or innocence of a defendant. . . . Second priority . . . should be accorded to upgrading performance of the prosecution and defense functions. . . . Third priority should be given to the task of insuring the quality of judges. The personnel of the criminal justice system are a crucial aspect of its operation and the judicial personnel perform an especially important function.[1]

These were not new and novel observations. The Wickersham Commission Reports in 1931[2] included similar statements as did the President's Commission on Law Enforcement and Administration of Justice in 1967.[3]

Unlike the broad reform mandate of a national commission report, this report is not a comprehensive study of all that is wrong with criminal justice, particularly its courts. Rather, this report is limited to an examination of the "adequacy and sufficiency" of the manpower, education and training resources of the criminal court process agencies and services throughout the United States (but excluding the federal criminal justice system).[4] It attempts to assess the current needs for these resources, what these needs will be in 1985 and presents recommendations as to how these needs may be met.

The judicial process—or adjudicative—sector of the criminal justice system consists of the courts, the prosecutors' offices and publicly funded indigent defense activities. The initial section of this chapter describes the criminal justice process today and the respective roles of each of these categories of agencies and their key personnel. Subsequent sections provide an overview of current employment in each of these categories of agencies and present findings on agency workloads and manpower needs, based on the National Manpower Survey and related information.

B Description of the Adjudicative Process

The central role of the court adjudication agencies is, in principle, to distinguish between persons wrongly accused of committing criminal acts and those who have committed crimes.[5] In addition to this function, the adjudication process culminates in a determination of the appropriate correctional dispositions for those found guilty. In practice, the fact finding and dispositional decisions are often joined through the exercise of prosecutorial discretion to waive prosecution or to dismiss nonserious criminal charges and through the corollary practice of plea bargaining. Moreover, the adjudication function of the courts is complemented (and in some instances limited) by the pressure upon court agencies to clear dockets, i.e., to move defendants expeditiously through the various criminal process states from arrest through to correctional custody and by the capacity limitations of existing correctional facilities. The tension between efficiency considerations, i.e., the demand for docket clearance and equity considerations is, as shall be discussed later, the most significant feature of the court process.

The triggering point for criminal adjudication operations is normally an arrest by a police officer. In addition to arrest, criminal justice authority over an individual may be accomplished through subpoena or warrant. In many jurisdictions a warrant for arrest may be requested by police, prosecution or even a private citizen. Once jurisdiction has been achieved the process is begun towards adjudication of the criminal charge.

Between arrest and trial (if any) a number of preliminary proceedings may intervene. Felony cases, which in most states are defined to be crimes with potential sentences of one year or more, generally are likely to include the full panoply of pre-trial

proceedings. Misdemeanor cases, entailing sentences of less than one year may be either quite summary or procedurally equivalent to felony proceedings, depending on the relative seriousness of the charge.

After arrest, the defendant is brought before a judicial office to be formally charged (initial arraignment). Pre-trial release decisions are made as to whether the defendant is to be permitted to post bail bond, to gain release on own recognizance, to be placed under supervised release, or to be held in jail pending trial. In some jurisdictions the release decision may be made before the arraignment, either by the police (station house bail) or by the judge.

If the defendant is indigent, unable to pay for counsel, an attorney will be appointed in most jurisdictions by the judge at the arraignment. The U.S. Constitution does not require that all indigent defendants be appointed counsel; it merely requires that no defendant can be given a sentence to imprisonment without counsel being appointed or waived.[6] Thus, in minor cases where no sentence to imprisonment is foreseen, and hence counsel is not required to be appointed, the court may bypass this procedure according to local law or custom

Following or joined with the bail hearing is a judicial probable cause hearing. At this hearing, the judge must determine if a crime has been committed and that the defendant probably committed it. This hearing is required in all cases where the defendant is to be held in jail pending trial,[7] but is not presently required in other cases. In most states felony charges usually require a probable cause hearing under state law. It is common, however, for the probable cause hearing to be waived by the defense in most of these states.

The probable cause hearing may or may not be adversarial, with the defendant having an opportunity to cross examine the prosecution witnesses or present his own. In most jurisdictions, local court procedures require the prosecutor to file a written statement, called an information, prior to the probable cause hearing, specifying the charges against the defendant. An indictment by a grand jury removes the necessity for a probable cause hearing, although in some jurisdictions, a probable cause hearing in a court of limited jurisdiction (i.e., those with authority to try misdemeanor cases only) is used to screen out weak cases before they are presented to the grand jury. In practice, generally, only felony cases follow the indictment procedure, although it can also be used in misdemeanor cases.

Prior to trial, defense counsel may often file motions to: discover the prosecution's evidence, suppress evidence, demand a bill of particulars, move the trial to another jurisdiction, and other pretrial motions. Prosecution attorneys will perform similar activities in the pre-trial period. In some jurisdictions, court rule requires a pre-trial conference between prosecution and defense to discuss plea bargaining. In a few jurisdictions, omnibus hearings are held which combine all pre-trial motions with discovery and plea bargaining.[8]

At trial, the defendant may choose between a jury trial and a trial without a jury, before the judge. Recent Supreme Court decisions permit the size of the jury to be less than the traditional 12 members,[9] and also permit convictions by less than a unanimous verdict.[10] Whether both variations may occur simultaneously has not been decided, however.

If a verdict of guilty is reached after trial, sentencing of the defendant to release, fine, probation or imprisonment then occurs. In a few jurisdictions sentencing is still performed by a jury. In death penalty cases as well as some other cases, a dual trial procedure commonly is used, whereby a separate evidentiary hearing after the determination of guilt is held for the sole purpose of hearing evidence relative to the sentencing decision.

In most jurisdictions, however, a judge determines the sentence for the defendant. In the lower courts the sentencing decision will be at the same time that the verdict is announced. In felony proceedings many states require the judge to have the probation department prepare a pre-sentence report detailing for the judge the defendant's personal history and the probation officer's sentencing recommendation. In other jurisdictions, the judge is permitted but not required in both felony and misdemeanor proceedings to have a pre-sentence report prepared at the judge's discretion.

Appeals of criminal convictions are also subject to differing jurisdictions based on the type of court where the trial was held. In those states where a misdemeanant was tried in the lower court, the first appeal from the conviction usually occurs in the court of general jurisdiction. This may be trial *de novo*, where the case is retried in its entirety, or by an appeal on the record made in the lower court. Where the trial occurred in the general jurisdiction court, the appeal will go to an appellate court—which has restricted jurisdiction to try cases and hear evidence. Appeals in the appellate court are entirely based on the record below. Appellate courts are of two types. Most familiar is the highest appellate court, usually called the supreme court. In addition to the highest appeals court there may also

be an intermediate appeals court. Where these courts exist, the right to appeal a felony conviction may be limited to an appeal to the intermediate court. The right to appeal from this court to the highest court will be determined by state statute, and may, for example, include cases involving death penalty or where disagreement between the judges occurred in the intermediate appeals court. A discretionary right to appeal from the intermediate court to the high court may be granted in some states by either court or in other states by the highest court alone.

Criminal convictions involving issues of constitutional law may be appealed by a litigant from the highest court of a state having authority to decide that case to the United States Supreme Court. Questions of law involving state issues only, not federal, may not be appealed to the U.S. Supreme Court.

In addition to direct appellate review, state and federal courts may also hear petitions for *habeaus corpus* or *coram nobis* requesting reversal of a conviction or a new trial. These post-conviction proceedings may be based upon newly discovered evidence, violation of federal or state constitutional law or similar grounds. Post conviction petitions may call for an evidentiary hearing; but in the majority of cases, these petitions are disposed of without any hearing or trial.

A final jurisdictional responsibility of the criminal courts is that of their collateral powers vis a vis criminal justice operations. The most significant such authority exercised is that of prisoner rights litigation. In a few states this authority is brought into play through mandamus proceedings by claiming a violation of the terms of the court's order placing the prisoner under the correctional authority's custody ("good care"). In most jurisdictions, however, prisoner rights cases are brought as *habeas corpus* petitions directly attacking the conditions of custody. A second class of prisoner related litigation is revocation hearings for violations of parole or probation conditions. Revocation hearings are similar procedurally to probable cause hearings for criminal charges; the same burden of proof is needed, and the proceedings need not be adversarial in all circumstances.

C. Organizational and Employment Characteristics

The responsibility for administration of justice, as for law enforcement, is very largely exercised by state and local governments. In 1974, of a total of 206,000 persons employed in adjudicative agencies, 189,000 were employed in state and local government agencies and only 14,000 were employed in the Federal Government, the latter almost entirely in federal courts and prosecution offices. In nearly all states, moreover, the function of adjudication of both criminal and civil cases is, in first instance, very largely a responsibility of local government agencies. Thus, of the 189,000 state and local judicial process personnel, 153,000—nearly 80 percent—were employees of county or municipal agencies, with county government agencies alone accounting for more than one-half of the total (Table II–1).

The high degree of decentralization of the adjudicative system of the United States is further indicated by the fact that nearly 26,000 separate state and local judicial process agencies were identified in Census directories as of 1974, including 15,000 courts (at all levels), over 10,000 prosecution and legal services offices, and over 500 public indigent defense agencies. Of this total, over 23,300 agencies were at the county and municipal levels. As a result, the number of employees per agency was very small, averaging 7.5 full-time and part-time employees, or 6.6 per agency, on a full-time equivalent basis. There were, of course, wide variations in agency size, by level of government, from an average of 16.1 full-time equivalent employees in state agencies, to 2.8 in municipal agencies.

The large number and small size of most court and court-affiliated agencies, in turn, results from the diverse and often fragmented organizational structure and jurisdictional arrangements in effect in the 50 states, with respect to the separate major agency categories: the courts, the prosecution, and the public defender function. These are described separately below.

1. *Courts.* In all but a few states, state and local courts are organized hierarchically into three tiers: appellate level courts, trial courts of general jurisdiction and limited jurisdiction courts. With some exceptions, the appellate and general trial courts handle both criminal and civil cases, whereas limited jurisdiction courts are likely to be considerably more specialized, particularly in large cities and metropolitan areas.

- *Appellate courts,* which include the state supreme courts, are at the apex of the state/local court system. Their responsibility is primarily that of reviewing the actions of lower level courts under established appellate procedures. In addition to the state "supreme court," about one-half of the states have one or more inter-

TABLE II–1

State and Local Judicial Process Agencies: Number of Agencies and Employment, by Type of Agency, and Local Governments, 1974

Agency Type and Level of Government	Number of Agencies	Employees		Average Employees Per Agency	
		Total	Full-Time Equivalents	Total	Full-Time Equivalents
Total, judicial process	**25,720**	**192,300**	**169,800**	**7.5**	**6.6**
State	2,380	39,700	38,300	16.7	16.1
County	9,410	104,900	93,000	11.1	9.1
Municipal	13,930	47,700	38,400	3.4	2.8
Courts	**14,990**	**134,300**	**118,400**	**9.0**	**7.9**
State	1,550	24,600	23,900	15.9	15.4
County	6,330	78,300	68,700	12.4	10.9
Municipal	7,110	31,400	25,700	4.4	3.6
Prosecution and legal services	**10,300**	**51,500**	**45,400**	**5.0**	**4.4**
State	600	12,400	11,800	20.7	19.7
County	2,800	23,000	21,100	8.2	7.5
Municipal	6,800	16,100	12,500	2.4	1.8
Indigent defense	**530**	**6,500**	**6,000**	**12.3**	**11.3**
State	230	2,700	2,600	11.7	11.3
County	280	3,600	3,200	12.9	11.4
Municipal	20	200	200	10.0	10.0

Sources: Number of agencies from Census Bureau Directory files, as revised by NMS. Employment data from LEAA/Census, *Expenditure and Employment Data for the Criminal Justice System, 1974*. Number of employees in county and municipal agencies partially estimated, based on data for large counties and cities. Municipal data include data for cities, townships and consolidated city/county agencies. All data rounded.

mediate courts of appeal with initial appeal jurisdiction over criminal and/or civil matters. In three of these states there is an intermediate court of appeals only for criminal matters. In addition to their judicial duties, the judges of many state supreme courts have administrative authority over the entire state court system (which may not always include the limited courts, however).

- *Trial courts of general jurisdiction*, usually called district, circuit, or superior courts, are normally the courts of initial jurisdiction for trying felony cases. In addition, most of these courts exercise civil jurisdiction (with some specialized exceptions), and many also try certain misdemeanor cases, either *de novo* or as an appeal. In five states with unified court systems, the court of general jurisdiction has responsibility for all criminal prosecutions, as there is no other trial court in those jurisdictions. Of these, however, three have a special division of the court analagous to a limited court where magistrates, not judges, try misdemeanor cases in that court's division.

The organization of courts of general jurisdiction can vary in at least three ways. In some states (e.g., New Jersey), the court of general jurisdiction is organized statewide. While judges normally are assigned to one court, they may be reassigned to other courts in the state as needed. In other states (e.g., Florida), the court of general jurisdiction is divided into judicial districts, comprised of one or more counties. Generally, court sessions are rotated among counties and there is little transfer of judges between districts. The third type of court structure consists of trial courts organized strictly by county (e.g., California).

- *Courts of limited jurisdiction*, in most states have the dual responsibility of trying misdemeanor and municipal ordinance violations and of holding pre-trial hearings and setting bail in felony matters. These courts are forums for traffic offenses, petit larceny, drunkenness, prostitution, and similar misdemeanors. In civil matters, they handle most of the disputes between landlords and tenants, insurers and claimants, debtors and their creditors. Domestic relations matters and probate of wills are also often handled by lower level courts.

Courts of limited jurisdiction often function quite differently than do general trial courts. There may not be right to jury trial, for example, and the proceedings may be held without

any record being kept. Not all trial judges in lower courts are lawyers. In 38 states, non-law-trained judges may hear criminal cases and sentence defendants to terms of imprisonment. Appeals from a limited court are usually heard in the trial court of general jurisdiction. In some states, however, limited courts are vertically organized with one limited court having immediate appellate jurisdiction over another limited court.

In the past two decades, many states have begun a process of court unification that has resulted in the abolition of or reduction in the number of lower courts. In addition, increased concern over their operation has led to changing limited courts into courts of record. These changes have served to reduce the number of limited courts in over 34 states since New Jersey began its court unification effort almost thirty years ago.

- *Juvenile courts*, generally classed with limited jurisdiction courts, may be divisions of a general or limited jurisdiction trial court, a separate court, or part of a special jurisdiction court, such as a family court or probate court. In 1973, approximately 3,000 juvenile courts and 3,200 judges with juvenile jurisdiction reported spending full-time on juvenile matters.[11]

  An important feature of juvenile courts is that nonjudicial or parajudicial personnel may make judicial decisions including fact-finding or disposition. In some states, these functions are handled by judicial referees, while in others, they are performed by probation officers. In only 9 of the 28 states having statutory provision for referees is there a requirement that the referees be law trained. Probation officers are almost never required to be law trained, even when acting in a parajudicial capacity.

2. *Prosecution and legal service agencies.* The prosecution function within states may be shared by three or more offices—the state attorney general, the district attorney and the county or city attorney. In three states the state attorney general has full responsibility for felony prosecution exercised through area branches of his office. In two states, the state attorney general has no criminal law responsibilities, and in the remainder he shares responsibility with local prosecutors, usually handling appeals and initiating some prosecutions.

The official below the state level who has responsibility for felony prosecutions usually has the title of district attorney but may also be known as the county attorney. The 'district' of a district attorney may be one or more counties depending on the court organization in individual states. Many of these prosecution offices handle misdemeanors and other less serious offenses as well as felony cases.

The third type of office is one whose jurisdiction is limited to the prosecution of less serious crimes—misdemeanors and municipal ordinances. The prosecutor may be the municipal legal officer (corporation or city counsel), or the county law officer where the county is part of a judicial district in which the district attorney is responsible for felonies.

In addition to the preparation and prosecution of criminal cases in court, prosecutors review police arrest information to determine which cases will be prosecuted. If formal charges are filed, the prosecutor may enter into negotiations with defense counsel and agree to a lesser charge in exchange for a guilty plea depending on the character of the offense and the evidence. In about four out of ten of the jurisdictions that responded to the NMS survey of prosecutors, there are pre-trial diversion programs for offenders, which the prosecutor may offer the accused as an alternative to court action. Many prosecution offices have civil as well as criminal law responsibilities and deal with juvenile delinquency cases as well as adult crime.

Responses to the NMS Survey, which was limited to state and county legal offices having prosecution responsibilities, indicate that almost all of these offices had responsibilities for the prosecution of felonies and misdemeanors, and that more than half had responsibilities for prosecuting ordinance violations (Table II–2). Larger agencies were less likely to adjudicate juvenile cases or to have civil law responsibilities, but were more likely to engage in appellate proceedings than smaller offices. Large offices are located primarily in metropolitan jurisdictions, where a separate office of the corporation counsel is often available for civil law matters and for nonfelony criminal or juvenile matters. In smaller jurisdictions, which may not have separate offices of corporation counsel, civil law responsibilities are performed either on a contract basis or may be assigned to the "district attorney," who is also the county government's attorney in civil law proceedings.

3. *Public defenders.* The right to counsel's presence and effective assistance in all criminal cases involving a sentence to imprisonment has been clearly established by a series of Supreme Court decisions in recent decades. This has imposed a requirement upon the courts to provide counsel for

TABLE II–2

Percent of State and County Prosecution Agencies Performing Selected Functions by Size, 1975

Function	Number of Employees				
	75 or more	25–74	10–24	5–9	1–4
Prosecution of felonies	100	96	96	97	91
Prosecution of misdemeanors	86	90	94	94	96
Prosecution of ordinance violations	52	65	65	64	67
Adjudication of juveniles	75	86	81	86	84
Appellate proceedings	87	72	77	67	67
Civil responsibilities	52	64	71	80	80

Source: NMS Executive Survey, 1975.

defendants who are indigent, and hence do not have the resources to retain private counsel. This is accomplished either through an "assigned counsel" system, where courts assign local attorneys in private practice as defenders on a case by case basis, or through a public defender system. The latter refer to systems under which an attorney or group of attorneys are retained by the state, either as salaried employees or under a contractual arrangement, to provide legal representation for indigent criminal defendants on a regular basis.

The extent of use of public defender—rather than assigned counsel—systems varies widely by state and by type of jurisdiction. A 1973 survey by the National Legal Aid and Defender Association (NLADA) found, at that time, that 650 defender systems were providing indigent defense services throughout the United States. These defenders were in jurisdictions serving 64 percent of the nation's population. They were primarily concentrated in metropolitan and other urban counties, whereas rural jurisdictions continued to rely mainly on assigned counsel arrangements.[12] About 60 percent of all defenders responding to the NLADA survey were public employees, while the remainder were attorneys of a defender corporation, a legal aid society, or of a private law firm under contract to the government.

Public defender agencies are typically organized at either the county level or as part of a statewide defender system. In 1973, 16 states had assumed responsibility for organizing and funding defender services at the state level, and statewide defender legislation was either pending or under consideration in an equal number of additional states. Of a total of 6,500 employees of publicly administered indigent defense agencies in 1974, 2,700 were employed by state governments, 3,600 by county governments and only 200 by municipal governments.

4. *Probation.* The most significant category of nonlegal personnel attached to the court are the probation officers. Typically, probation officers will perform an investigative function for the judge to determine the defendant's suitability for probation or other sentencing disposition. A pre-sentence report is prepared for the judge based upon the probation officer's investigation, which typically includes the officer's sentencing recommendation.

In many jurisdictions, probation is combined with the parole supervision agency. Nominal management authority may therefore be with the parole or corrections department, rather than with the court, where the probation officer is located. For this reason, assessment of personnel and training needs for this function have been included in Volume III, Corrections, of this report.

D. Judicial Process Occupations

1. *Key occupations.* Four judicial process occupations were selected for detailed analysis of personnel needs and of specialized training and educational requirements for the National Manpower Survey. These include judges, chief and assistant prosecutors, chief and assistant defenders, and professional court administrators. These occupations, which account—in combination—for about 30 percent of total judicial process employment, were selected because of their critical role in the adjudicative process, and because all were considered to require considerable periods of specialized education or training.

- *Judges* play the central role in the adjudicative process. In addition to presiding at trials, conducting hearings and similar proceedings, setting bail, imposing sentences or fines, their duties may include administrative responsibility for operation of the courts, holding of conferences with prosecution and defense counsel, preparation of opinions and related tasks. A recent survey by the American Judicature Society had identified a total of 21,600 "judges," or persons exercising judicial authority, in courts of limited jurisdiction.[13] Included in this total are officials, such as justice of the peace or magistrates, who are not necessarily lawyers, and who perform certain limited judicial functions often on a part-time basis. A total of 5,400 judges were employed in general jurisdiction courts, which also

employed about 4,400 parajudicial personnel, such as magistrates and referees. Less than 800 judges were employed in state appellate courts.

- *Prosecutors and assistant prosecutors* review evidence to determine whether a criminal charge is warranted, develop case information through interviews and the collection of physical evidence, prepare cases, negotiate with defense counsel and prosecute cases in court. An estimated total of about 21,000 attorneys were employed in all state and local prosecution and legal service offices in 1974, including those performing exclusively or mainly civil law functions. It is estimated that about three-fifths of the attorneys were employed in state or county offices with responsibilities for prosecution of serious criminal offenses.
- *Defenders and assistant defenders* in state and local defense agencies perform the responsibilities of defense counsel to represent clients found to be indigent, and, in addition, may provide collateral services, such as referral to appropriate community service agencies or related counseling. About 3,600 attorneys were employed as chief defenders or staff attorneys in public indigent defense offices in 1974, or about 3,200 on a full-time equivalent basis.
- *Court administrators.* The recognized need for more effective management of courts and court systems has resulted in the emergence of the professional court administrator as a recognized occupation during the past decade. These are defined as nonelected professional administrators concerned with caseflow throughout the court system, personnel management, budget and financial management, planning and research, and all other administrative and managerial business of the court system. Since no systematic directory of court administrators or of courts employing court administrators was available, the National Manpower Survey contacted state offices of court administration and/or state judicial councils in each state to identify such court administrators. A total of 455 state or local court administrators were reported.

2. *Occupational distributions, by agency category.* Data on the occupational distribution of all employees of judicial process agencies were provided by the NMS surveys of courts, and of prosecutor and defender executives. These are summarized below.

- *Court occupations.* The occupational distribution of courts employees, as shown in Table II–3, is based on the NMS survey of courts of

TABLE II–3

Occupational Distribution of Employees of State and Local Courts of General Jurisdiction by Size of Agency, 1974[a]

Occupational Group	Total		Percent Distribution, by Agency Size				
	Number[a]	Percent Distribution	150 or More Employees	75–149 Employees	25–74 Employees	10–24 Employees	1–9 Employees
Total, all occupations	**53,800**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Judicial occupations, total	**9,800**	**18.2**	**11.7**	**17.7**	**24.6**	**25.9**	**22.9**
Judges	5,400	10.0	5.2	8.0	13.8	16.1	19.1
Other officials exercising judicial authority	4,400	8.2	6.5	9.8	10.8	9.8	3.8
Other occupations, total	**44,000**	**81.8**	**88.3**	**82.3**	**75.4**	**74.1**	**77.1**
Clerks and deputy clerks of court	11,800	21.9	17.1	21.9	22.4	26.0	34.0
Bailiffs	5,800	10.8	10.6	12.4	10.6	11.5	9.8
Court reporters	4,700	8.7	6.6	7.6	9.5	10.6	13.9
Probation and parole officers	8,200	15.2	18.8	14.5	11.9	12.7	11.4
Law clerks	1,100	2.0	2.8	2.5	2.3	1.0	.4
Staff attorneys	700	1.3	1.0	1.0	1.5	1.5	1.5
Other professional and technical	1,600	3.0	4.2	3.9	2.3	1.2	.4
Clerical/secretarial	7,300	13.6	20.6	13.2	9.6	6.8	4.2
Other	2,800	5.2	6.7	5.4	5.2	3.0	1.5

Sources: Total employment, as of 1974, from LEAA/Census, *Expenditures and Employment Data for The Criminal Justice System*, 1974, Occupational distributions, as of June 1975, based on NMS Courts Survey, 1976.

[a] Full-time equivalent employees.

general jurisdiction. Judges constituted, on the average, only 10 percent of total full-time equivalent employment in these courts. In addition to an estimated total of 5,400 judges, these courts employed about 4,400 magistrates, referees, or similar officials who exercise judicial authority. The remaining 44,000 full-time equivalent employees, or 82 percent of the total, were engaged in a variety of non-judicial occupations. Of these, the largest category consists of clerks of court and their deputies. The clerk of court is normally an elected official whose responsibilities may range from strictly clerical functions to full responsibility for court administration. Clerks of court and their deputies totalled nearly 12,000, and accounted for about 22 percent of employment in these courts in 1974. Other major occupational groups of court personnel include probation officers, court reporters, bailiffs and clerical or secretarial personnel. Larger courts also employ personnel in a number of other specialized occupations including court administrators, staff attorneys, law clerks, interpreters, and in other professional, technical or administrative positions as well as in supporting service-type positions.

Little is known about staffing of courts of limited jurisdiction. One recent survey of misdemeanor courts in cities with populations greater than 100,000 suggests, however, that utilization of non-judicial personnel in these courts is primarily limited to administrative and clerical functions:

> Two-thirds of the courts surveyed have between one and four full-time judges and approximately 90 percent have fewer than nine. . . . Three-fourths of the courts surveyed now have a full-time court clerk and about one-third (34.4 percent) have a full-time court administrator. . . . The average city court has 20 clerical workers, but almost half (44 percent) have 10 or less. . . . Almost half (46.1 percent) of the courts employ a full-time court reporter.[14]

- *Prosecution occupations.* The occupational distribution of employees in prosecution offices, as shown in Table II-4, is based on the NMS survey of county and state prosecutors, excluding legal service offices with primarily non-criminal functions. Over one-half (55 percent) of the personnel in these agencies consisted of prosecutors and assistant prosecutors. Secretaries, stenographers, and typists accounted for an additional 34 percent. Other specialized personnel, found primarily in the larger agencies, included investigators and paralegal staff. The latter are non-lawyers who perform certain tasks traditionally assigned to lawyers, ranging from strictly clerical duties to serving as a trial assistant, in a wide range of more sophisticated tasks. Use of paralegals is mainly limited to larger agencies, those with 10 or more employees, where they accounted for between 3 and 4 percent of total staff. Other occupations found in some of the large prosecution offices may include computer specialists, interpreters, case workers, and various administrative specialists.

  A substantial proportion of attorneys serving as prosecutors and assistant prosecutors in small agencies perform these functions on a part-time basis, while maintaining their private law practices. The National Advisory Commis-

TABLE II-4

Occupational Distribution of Employees in Prosecution Agencies by Size of Agency, 1974

(Percent distribution)

Occupational Group	Size of Agency					
	All Agencies	75 or More Employees	25-74 Employees	10-24 Employees	5-9 Employees	1-4 Employees
Total employment	100.0	100.0	100.0	100.0	100.0	100.0
Chief and assistant chief prosecutors	12.1	3.2	7.0	14.0	20.3	37.2
Assistant prosecutors	33.0	39.3	35.9	33.6	29.3	12.4
Investigators	10.4	14.0	10.9	8.9	7.5	3.0
Paralegals	2.6	3.1	4.1	3.4	.4	.3
Secretaries, stenographers and typists	34.2	29.4	33.8	33.6	39.0	44.6
Other	7.7	10.9	8.3	6.4	3.5	2.4

Source: NMS Survey, 1975.

TABLE II–5

Percent of Prosecution and Legal Services Workers Employed on a Part-Time Basis, by Occupational Group and Size of Agency, 1975

Occupational Group	Size of Agency—Number of Employees					
	Total*	75 or More	25–74	10–24	5–9	1–4
Total	15	1	7	22	33	48
Chief and assistant chief prosecutors	36	0	9	27	36	52
Assistant prosecutors	14	*	7	34	51	67
Investigators	3	1	0	5	10	26
Secretaries, stenographers, and typists	11	1	4	8	16	38

*Less than one-half percent.
* Based on sample response; not weighted.
Source: NMS Executive Survey, 1975.

TABLE II–6

Occupational Distribution of Employees in Public Defenders Agencies, 1974

Occupational Group	Total Employment	Percent of Total	Percent Part-time
Total	6,000*	100.0	19.0
Chief and assistant chief defender	560	9.3	27.0
Assistant defenders	2,740	45.6	19.6
Investigators	700	11.7	5.5
Paralegals	150	2.5	5.9
Secretaries, stenographers, typists	1,430	23.8	9.4
Other	420	7.0	48.6

* Full-time equivalent employment. Total from U.S. Department of Justice, LEAA, and U.S. Department of Commerce, *Expenditure and Employment Data for the Criminal Justice System*, 1974. Occupational distribution from NMS Executive Survey, 1975.

sion on Criminal Justice Standards and Goals, and other studies, have recommended that each prosecutor's office should employ at least one full-time prosecutor, through restructuring of jurisdictions, where necessary.[15]

Nevertheless, as shown in Table II–5, over one-third of chief prosecutors and assistant chief prosecutors, and 14 percent of all assistant prosecutors in agencies responding to the NMS survey were employed on a part-time basis. Part-time employment was particularly frequent in the smallest agencies, with less than five employees, where over one-half of the prosecutors and two-thirds of the assistant prosecutors were on a part-time basis.

- *Indigent defense occupations.* Staffing of public indigent defense offices tends to parallel that of prosecution offices. As shown in Table II–6, of an estimated total of 6,000 public employees in these agencies in 1974, about 3,300 or 55 percent consisted of defenders and assistant defenders, of whom about 27 percent and 20 percent, respectively, were employed on a part-time basis only. The only other major occupation groups are secretaries, stenographers and typists, and investigators. About 150 personnel, or 2.5 percent of the total, were identified as paralegals in the NMS survey—about the same proportion as reported in prosecution offices.

E. Assessment of Manpower Needs

Any assessment of manpower needs for judicial process agencies requires, as a point of departure, some definition of the goals of the system. One simple formulation of these goals, propounded by the Joint Commission for the Effective Administration of Justice, a decade ago, is: "Justice is effective, when fairly administered without delay, by competent judges, operating in a modern court system, under simple and efficient rules of procedure."[16] This, and similar formulations, provides equal emphasis to the requirements of equity and of efficiency. In relation to these criteria, evaluations of the existing adjudicative process have noted, as major shortcomings, the problem of case backlogs and case delay, pervasive reliance upon, and abuse of, plea bargaining procedures, inadequate screening of cases, insufficient provision of defense counsel, sentencing disparities among courts and judges, and insufficient time—generally—for judges, prosecutors and defenders to permit adequate pre-trial preparation, hearings, and an even-handed administration of justice.

These shortcomings have been attributed to a combination of causes, including—among others—mounting case loads generated by rising crime rates and by increases in civil litigation, outdated forms of court organization and management, deficiencies in the process of selection and training of adjudicative personnel and various defects in criminal codes and procedures.

The need for additional manpower—for more judges, prosecutors, defenders or specialized management and support personnel—has been frequently cited, too, as one of the factors contributing both to case delay, and to many of the qualitative shortcomings of the adjudicative process. These needs have, however, rarely been quantified at the national level, in part because essential data on judicial process

agency workloads in relation to personnel have not been available. There are, at present, no comprehensive statistics on case loads and case backlogs for the nation's courts and for associated prosecution and defense agencies. In the absence of detailed and reliable data of this type, and of systematic management-designed performance standards, no definitive assessment of manpower needs of courts, prosecution and defense agencies is possible.

However, three approaches were used by the National Manpower Survey to provide some insight on these issues. First, available crime rate statistics and employment data for the period 1970–74 were compared to provide an initial indication of the extent to which staffing in these agencies has kept pace with crime-related workloads. Secondly, agency officials, including court administrators, chief prosecutors and defenders, were queried in the NMS survey concerning their agency's manpower needs and about related operational problems, such as case delay. Finally, the National Manpower Survey instruments provided for submission of summary case load data for courts, prosecutor and defender agencies. These data have been related to staffing levels in the reporting agencies to provide measures of the extent of variation in workloads per key employee among these agencies, and have been compared—in the case of defender offices—with standards, or norms, previously developed for determining the manpower needs for defender services.

1. *Adjudication agency workload and employment trends.* Rough indexes of the number of criminal cases entering into the judicial process sector each year can be developed from data collected annually by the Federal Bureau of Investigation. The FBI publishes estimates of the total number of reported Part I crimes each year based on reports from police agencies serving a high proportion of the U.S. population (94 percent in 1974). Based on a smaller number of reports, the FBI also publishes statistics on the number of persons charged with Part I and Part II crimes, as well as on the number of Part I crimes reported for the same cities.[17] These relationships can be used to estimate the overall trend in the number of persons charged with crimes, whose cases contribute to the workload of judicial process agencies.

In the past decade, the rising volume of crime has resulted in sharp increases in the flow of serious crime cases to prosecution agencies and to the courts. Between 1965 and 1974 both the volume of Part I crimes reported to the FBI and the number of persons charged with Part I crimes more than doubled. Reported crimes increased by 116 percent during this period, and Part I charges by an estimated 105 percent (Table II–7). Between 1970 and 1974, the period for which nationwide employment statistics are available for judicial process agencies, Part I crimes rose by 27 percent and Part I charges by 33 percent.

TABLE II–7

Indicators of Adjudication Agency Workloads, 1966–1974

(Number in thousands)

Year	Part I Crime		Persons Charged with Crime				Delinquency Cases Disposed of by Juvenile Courts	
			Part I		Part II			
	Number	Index*	Number	Index*	Number	Index*	Number	Index*
1965	4,711	58.5	871	64.8	4,837	75.7	697	66.3
1966	5,192	64.5	883	65.7	4,589	71.9	745	70.8
1967	5,868	72.9	915	68.1	4,632	72.5	811	77.1
1968	6,680	83.0	1,142	85.0	5,803	90.9	900	85.6
1969	7,367	91.5	1,260	93.8	6,374	99.8	988	93.9
1970	8,050	100.0	1,344	100.0	6,386	100.0	1,052	100.0
1971	8,537	106.0	1,485	110.5	6,730	105.4	1,125	106.9
1972	8,200	101.9	1,476	109.8	6,996	109.6	1,112	105.7
1973	8,666	107.7	1,621	120.6	7,017	109.9	1,144	108.7
1974	10,192	126.6	1,784	132.7	6,902	108.1	—	—

*1970 = 100.

Sources: *Persons Charged with Crime*: Adapted from data in *FBI Uniform Crime Reports* by applying ratio of persons charged to reported Part I offenses from sample cities to total number of offenses reported for the U.S. Part II charges based on the ratio of Part II to Part I charges in the sample cities.

Delinquency Cases Disposed of by Juvenile Courts: U.S. Department of Health, Education and Welfare, Office of Human Development and Youth Development, *Juvenile Court Statistics, 1973*, March 1975.

The number of persons charged with Part II offenses increased by 43 percent between 1965 and 1974, or at less than half the rate of the Part I charges, and by only 8 percent between 1970 and 1974. The much slower growth in the number of persons charged with this category of offenses is due, in part, to the growing practice in many communities of deemphasizing, or discontinuing, arrests for certain "victimless" crimes, such as public drunkenness, which generally harm only the person committing the act. Although the number of charges for Part II offenses was still nearly four times as great in 1974 as for Part I offenses, the latter are a more significant indicator of workload trends for the adjudicative agencies, since they normally require active involvement of prosecutor and defender agencies, and of general trial courts, whereas most Part II offenses are dealt with, in summary fashion, by the lower courts, often without the presence of either a representative of the prosecutor's office or of defense counsel.

A third available indicator of adjudicative workload trends is the number of delinquency cases disposed of by juvenile courts. This rose by about 50 percent between 1965 and 1970, but by less than 9 percent between 1970 and 1973. The relatively small increase in the latter period may be due in part to the slowdown in the rate of growth of the teen-age population in the early 1970's, as contrasted to very rapid growth in the preceding decade.

The above indicators are, at best, suggestive. A comprehensive system of measurement of adjudicative workloads would require systemic data by type of case, on cases entering, pending and disposed of at each stage of the adjudicative process, from the point of arrest, through initial appearances, preliminary hearing, arraignment, trial, and the appeals stage. Nevertheless, the trends available do point to some slow down in the overall rate of growth of crime-related adjudicative workloads during the first four years of the current decade, as compared to the very sharp rates of increase between 1965 and 1970. This slowdown has been most apparent, however, in the case of Part II offenses and of juvenile delinquency cases. Both of these categories of cases impact, primarily, on the workload of the lower courts, rather than on that of courts of general jurisdiction or of prosectuion and defense agencies.

These trends can, in turn, be compared with employment trends in state and local judicial process agencies since 1970, when nationwide statistics first became available on a comparable basis. Between 1970 and 1974, full-time equivalent employment in these agencies rose by 38 percent, as shown in Table II–8. Courts increased their staffs by 33 percent over this period; prosecution and legal service agencies by 45 percent; and public indigent defense agencies nearly doubled their staff, from a low level of only 3,100 in 1970. Since the number of persons charged with Part I offenses rose by 33 percent, whereas the indicators of Part II charges and of juvenile delinquency cases rose much more slowly, these comparisons suggest that state and local judicial process agencies were more adequately staffed in 1974 than in 1970, in relation to criminal caseloads.

These comparisons make no allowance for increased workloads for these agencies resulting from such factors as recent Supreme Court decisions, establishing the right to counsel's presence and effective assistance in all criminal cases involving a sentence to imprisonment.[18] Nor do they include any allowance for the trend in the volume of civil case loads, which are a major component of the total caseload of many courts and prosecution or legal service agencies. The importance of the latter is suggested by the fact that general jurisdiction trial courts who responded to the NMS survey in 1976 reported that, on the average, judges devoted about 51 percent of their work time to civil cases, as compared to 37 percent to criminal cases, 7 percent to juvenile cases, and 5 percent to traffic offenses.

In order to provide a more comprehensive measure of recent caseload trends, the NMS survey of general jurisdiction courts requested data on cases pending at the beginning and end of fiscal year 1975, and on cases disposed of during fiscal year 1975, by major category of case. The results, summarized in

TABLE II–8

Employment in State and Local Judicial Process Agencies, 1970 to 1974

(Full-time equivalent employment, numbers in thousands)

Year	Total	Courts	Prosecution and Legal Services	Indigent Defense
1970	123.2	88.7	31.4	3.1
1971	137.3	99.7	34.1	3.5
1972	145.0	103.2	37.8	4.1
1973	155.2	109.2	40.9	5.1
1974	169.7	118.4	45.4	6.0
Percent change, 1970 to 1974	+38	+33	+45	+94

Source: LEAA/Census, *Expenditures and Employment Data for the Criminal Justice System.*

Table II-9, indicate that the number of civil cases pending greatly exceeded other types of cases in fiscal year 1975. Case backlogs increased by 10 percent for felony cases, and by 13 percent for civil cases during that year, with no significant change in backlogs for either misdemeanors or juvenile cases. Estimates of the number of months required to process pending cases were also computed for each type of case, by relating the size of these backlogs to actual dispositions during the year. These ranged, at the end of fiscal year 1975, from about three months for pending misdemeanors and juvenile cases, to nearly six months for felony cases, and ten months for civil cases.

The growth in felony case backlogs—as well as of civil case backlogs—during fiscal year 1975, and the increased disposition time required, thus suggests that recent employment growth in the courts has not been adequate—or effective—in coping with the continuing problem of mounting caseloads.[19]

2. *Judicial manpower and case delay in trial courts.* Since case delay had been identified as one of the most critical problems of the court system in recent assessments, the NMS survey of court administrators included a series of questions concerning the severity of this problem and its causes in the courts which they administered. In response to the question: ". . . how serious a problem is case delay in the trial courts for which you are administratively responsible?," 47 percent indicated that they considered case delay a "serious" problem, of whom more than a third indicated that it was "extremely" or "very serious". An additional 39 percent considered it a problem but not serious, while 15 percent did not consider it a problem at all, in their courts. Case delay appears to be viewed as somewhat less serious in appellate courts than for trial courts (Table II-10).

The court administrators who identified case delay as a problem were then asked to indicate, in their own words, what they considered to be the single most serious cause of case delay in their courts. As shown in Table II-11, the responses identified a wide range of contributing factors, including limitations of court resources, continuance problems and other personnel interaction problems. These varied explanations were not unexpected since recent studies have highlighted that the interactions of judges, prosecutors and defenders and the diverse motives and problems of each of these key participants, as well as the pressures of heavy workloads, all contribute to continuances and case delays.[20]

Insufficient personnel—primarily a shortage of judge time—was however cited as the most important factor by 28 percent of the 230 administrators responding to this question. Other responses, such as inadequate preparation of attorneys, or general references to overcrowded dockets, may also have reflected personnel shortages.

Court administrators were also asked to identify the types of additional personnel, or staff time that would "contribute most to reducing unnecessary delay and achieving the goal of speedy trials" in the

TABLE II-9

*Selected Court Caseload Statistics**

Changes in Pending Caseloads, General Jurisdiction Trial Courts, Fiscal Year 1975

Type of Case	Number of Courts Reporting	Average Pending Caseloads		
		Beginning of Year	End of Year	Percent Change
Felony	830	154	169	+10
Misdemeanor	432	162	158	−2
Juvenile	501	69	70	+1
Civil	948	943	1064	+13

Estimated Mean Months to Process Pending Cases Based on Number Disposed of in Fiscal Year 1975

Type of Case	Beginning of Year	End of Year
Felony	5.3	5.8
Misdemeanor	3.0	2.9
Juvenile	3.0	3.0
Civil	8.8	10.0

Source: NMS Survey of State and Local Trial Courts of General Jurisdiction, 1976.

TABLE II-10

Views of Court Administrators on the Seriousness of the Problem of Case Delay, 1976

(Percent distribution)

	Trial Courts	Appellate Courts
Extremely serious	4	8
Very serious	14	8
Moderately serious	29	32
A problem, but not serious	39	28
Not a problem at all	15	24
Total	**100**	**100**
(Number of reports)	(208)	(53)

Source: NMS Executive Survey, 1975.

TABLE II–11

Opinions of Court Administrators on Most Serious Cause of Case Delay, 1976

Cause of Delay	Percent of All Replies
Total	100
Resource shortages, total	46
Insufficient personnel	28
Judges	23
Other personnel	6
Insufficient or inadequate court facilities	3
Non-specific indicators of resource shortage	14
Overloaded docket or criminal calendar	13
Insufficient funds	1
Personnel interaction problems, total	41
Continuance problems	27
Attorneys not prepared	14
Continuances granted without sufficient reason	13
Scheduling problems (Trials, attorneys, witnesses)	7
Other personnel interaction problems	7
Time taken for jury selection	5
All other	9

Note: Detail may not add to total because of rounding.
Source: NMS Survey of Court Administrators, 1976. Based on responses from 230 court administrators.

courts they administer. In response to the question on types of personnel most needed, 39 percent identified increased judge time, and an additional 25 percent selected increased prosecution time as most important. Relatively few considered that an increase in staff time by the defense counsel or by other court staff would contribute most to reducing case delay.

Finally when court administrators were asked to identify, from a list of procedural policies, the one whose adoption would contribute most to reducing unnecessary delay in the courts they administer, stricter control of continuances was chosen most frequently by 37 percent of those who replied. The adoption or strict enforcement of statutory or regulatory time limits for processing cases was rated next most frequently as likely to reduce delay. (See Table II–12.)

Thus the two factors these respondents most emphasized as influencing case delay in courts, were again the amount of judge time available and the policy of the court in granting continuances.

3. *Prosecution agencies.* The NMS survey of prosecutors requested information on the attitudes or judgments of chief prosecutors concerning their agencies' manpower needs, as well as statistics on actual employment and caseloads for their agencies. The survey was limited to state and county offices identified as having criminal prosecution responsibilities, and excluded municipal legal offices as well as those state and county offices with civil functions only.

As a point of departure, executives surveyed were requested to identify in rank order the "most serious" manpower problem in their agencies and the major contributing factor (Table II–13). About 68 percent of the chief prosecutors reported that their most serious personnel problem was an inadequate number of authorized positions. The only other problem category which was identified as most serious by as many as 10 percent of the respondents was "inadequate training of personnel."

TABLE II–12

Opinions of Court Administrators on Procedural Policies That Would Contribute Most to Reducing Court Delay, 1976

	Percent Responding*	
	Contributes Most to Reducing Delay	Current Policy In Effect
Continuance related procedures, total	37	
Strict policy regarding granting of requests for continuances	33	42
Continuances granted with adjournment to date certain	5	44
Statutory and regulatory time limits for processing cases, total	21	
Revised statutes or regulations on time to process cases	12	36
Strict enforcement of statutory or regulatory time limits for processing cases	9	34
Revision in jury procedures, total	7	
Adoption of optional less than twelve jury panel system	3	24
Permitting jury decisions by less than unanimous vote in certain cases	3	18
Revised jury system which is management- and efficiency-oriented	2	28
Increased use of pre-trial conferences	10	48
Increased use of administrative proceedings (i.e., removal of certain cases from the formal judicial process)	10	32
Flexibility in use of judicial manpower	8	44
Other	6	

* Detail may not add to total because of rounding.
Source: NMS Survey of Court Administrators, 1976 (Based on 282 responses).

TABLE II–13

Prosecutors Responses on "Most Serious Manpower Problem" and on "Major Factor Contributing to Most Serious Problem," 1975

	Percent Distribution
Most Serious Personnel Problem:	
Inadequate number of authorized positions	68
Inability to achieve or maintain authorized strength	6
High (excessive) turnover	7
Inadequate training of personnel	11
Inadequate representation of minorities or women	2
Other	7
Total	100
Major Contributing Factor:	
General budgetary problems	61
General lack of qualified applicants	2
Lack of minority or female applicants	1
Inadequate levels of compensation	24
Insufficient funds for training	4
Limited opportunities for advancement	2
Other	6
Total	100

Source: NMS Executive Survey, 1975. Based on responses from 1,178 prosecutors, with respect to most serious personnel problems.

General budgetary problems were cited as the main contributing factor to these problems by 61 percent of the prosecutors. An additional 24 percent cited inadequate levels of compensation. Very few respondents, however, indicated that they had experienced difficulty in recruitment of qualified applicants at the time of the survey.

Chief prosecutors were also asked to report the occupational categories in which they currently were experiencing critical personnel shortages. About 38 percent of the prosecutors reported a critical shortage of both assistant prosecutors and investigators. Fewer executives reported needing clerical personnel but a sizable proportion (24 percent) also reported a critical need for these personnel.

In order to obtain a more quantitative assessment of the extent of perceived manpower needs, chief prosecutors were requested to estimate the number of assistant prosecutors needed to "fulfill effectively all the duties and responsibilities" with which their agencies were charged. On the average, prosecutors reported a need for 22 percent more assistant prosecutors, when responses were weighted by employment in each size group. As shown in Table II–14, the percentage increases in staff reported as needed varied inversely with agency size, from 19 percent for agencies with 75 or more employees, to 37 percent for those with fewer than 5 employees. This pattern is similar to that observed in responses by other categories of criminal justice agencies.

These "needs" assessments are compared in Table II–14 with estimates of employment change in their agency expected by chief prosecutors for fiscal year 1976. The average increase projected for fiscal year 1976 was 6 percent. Large and medium sized offices expected larger actual employment increases in fiscal year 1976 than offices with less than 10 employees. When the estimates of needs and expected growth are applied to total estimated employment of staff attorneys in all prosecution and legal service offices, they indicated a perceived need for an additional 4,000 attorneys as compared to an estimated actual increase of about 1,200 in fiscal year 1976.

About one-half of the prosecution agencies responding to the NMS survey on their manpower needs also provided data on their actual criminal caseloads in fiscal year 1975. Based on these reports, three ratios of caseloads per prosecutor employed were computed. The first was the ratio of felony cases per prosecutor employed. As shown in Table II–15, the median felony caseload per prosecutor, for all 595 agencies reporting these data, was 93 in fiscal year 1975. Larger agencies, with 10 or more employees, reported significantly higher felony caseload ratios than did those with fewer than 10 employees.

This initial set of ratios did not make any allowance for other types of criminal caseloads, or for differences among agencies in the proportion of full-time and part-time personnel. To provide a weighted

TABLE II–14

Percent Increases in Assistant Prosecutors Reported as "Needed" by Chief Prosecutors and Percent Increases in Employment Expected in FY 1976, by Size of Agency

Size of Agency	Median Percent Increase Needed[a]	Percent Increase Expected
All agencies[b]	22	6
75 employees or more	19	6
25–74 employees	20	7
10–24 employees	23	9
5–9 employees	28	5
1–4 employees	37	3

[a] Based on executives' estimates of the number of assistant prosecutors needed "to effectively fulfill all agency duties and responsibilities," in relation to actual reported employment.

[b] Weighted median.

Source: NMS Executive Survey, 1976.

TABLE II–15

Percent Distribution of Prosecution Agencies by Felony Cases per Prosecutor and by Size of Agency, 1975

Number of Felony Cases Per Prosecutor[a]	Size of Agency—Number of Employees					
	Total	75 or More	25–74	10–24	5–9	1–4
Total	**100**	**100**	**100**	**100**	**100**	**100**
50 or less	30	10	19	6	17	37
51–100	23	24	14	27	29	21
101–150	26	43	48	33	29	23
151–200	10	14	5	15	12	9
201 or more	11	10	14	19	13	10
Median	93	119	118	126	107	79
(Number of reports)	(595)	(21)	(21)	(52)	(76)	(425)

[a] Total number of felony cases divided by total number of prosecutors employed.
Source: NMS Executive Survey.

caseload measure for all major categories of criminal cases handled by prosecution offices, a workload measure referred to as "felony equivalent cases" was constructed by assigning the following weighting factors to non-felony cases: misdemeanors, .375; juvenile cases, .750 and appeals, 6.0. In the absence of representative data on the relative amount of staff time required for these categories of cases, the weights used were adapted from those recommended for defender agencies by the National Advisory Commission on Criminal Justice Standards and Goals. The result of this procedure, as shown in the second column of Table II–16, was to widen the relative disparity in caseload ratios among agencies in the various size groups. Based on this measure, the median felony equivalent caseload per prosecutor was 340 for agencies with 10 or more employees, or more than twice as great as the caseload of 154 per prosecutor for agencies with less than 5 employees.

The third set of ratios makes a further adjustment for the lower average hours worked per week by part-time prosecutors or staff attorneys. This measure of full-time equivalent cases per full-time equivalent prosecutor tends to narrow somewhat the caseload differential between large and small offices. Nevertheless, the larger agencies, those with 10 or more employees, had criminal caseloads per employee nearly twice as great as those computed for the smallest agencies, i.e., with fewer than five employees.

In the absence of any established caseload standards for prosecutors, the above data cannot be used to assess *total* manpower needs of these agencies. The implication of the above comparisons is, how-

TABLE II–16

Felony Cases and Felony Equivalent Cases per Prosecutor and Full-Time Equivalent Prosecutor, by Size of Agency, State and County Prosecution Agencies, 1975

Size of Agency (Number of Employees)	Felony Cases Per Prosecutor		Felony Equivalent Cases Per Prosecutor[a]		Felony Equivalent Cases Per Full-Time Equivalent Prosecutor[b]	
	Median	Number of Reports[c]	Median	Number of Reports[c]	Median	Number of Reports[c]
Total	**93**	**595**	**178**	**499**	**280**	**281**
10 or more	122	94	340	68	390	60
5–9	107	76	225	61	330	57
1–4	79	425	154	370	206	164

[a] Weighted average of felony, misdemeanor, juvenile and appeals cases. Felony cases, misdemeanors, juvenile cases, and appeals given weights of 1, .375 and 6 respectively.
[b] Weighted average of full-time and part-time prosecutors.
[c] The number of reports is reduced because of item non-response as each additional item of information is added to the calculations. Thus the drop-off in the number of reports in the final columns is due to the omission by many respondents of the number of hours worked per week by part-time prosecutors.
Source: NMS Executive Survey, 1975.

ever, that the larger prosecution offices have a larger *relative* need for additional staff attorneys to handle their criminal caseloads than do the small offices. This finding is consistent with the projections of employment growth in fiscal year 1976, by agency size, shown in Table II–14, which indicated higher growth rates for agencies with 10 or more employees than for smaller agencies. It is not consistent, however, with the results of responses by prosecutors to the question on the total requirement for assistant prosecutors in their agencies, which indicated an inverse relationship between agency size and the percentage increase in prosecution staff needed. In view of the possibility of some systematic response bias to the latter question, we are inclined to give greater credence to the combined evidence from our caseload analysis and from the responses to the question on actual employment growth, both of which suggest that staff shortages are most severe in the prosecution agencies which serve our larger cities and metropolitan areas.

4. *Indigent defense services.* The NMS survey of public defenders was limited to publicly administered state and local defender agencies, thus excluding those organizations performing indigent defense services on a contractual basis. As in the case of the prosecutor survey, public defenders were queried concerning their agency's manpower needs, and provided related caseload and employment data.

Chief defenders were asked, initially, to identify the most serious manpower problems in their agency and the major factor contributing to this problem. In response to these questions, 75 percent indicated that an inadequate number of authorized positions was their most serious personnel problem, and a virtually identical percentage identified "general budgetary problems" as the major contributing factor. These proportions were the highest in any of the seven NMS surveys of executives for the major sectors of criminal justice agencies. As shown in Table II–17, none of the other specified problem areas were identified as "most serious" by as many as 10 percent of the respondents.

Respondents were requested in another series of questions to assess how well their office was complying with recent Supreme Court decisions requiring defendants who may receive a jail sentence on conviction to have the opportunity of counsel. Nearly one-fourth (23 percent) indicated that their agency was fully complying with this requirement. An additional 44 percent reported "adequate compliance." However, 23 percent reported "minimum compliance" only, while 9 percent stated that their office was not even able to achieve minimum compliance with this requirement.

TABLE II–17

Chief Defender Responses on "Most Serious Manpower Problem" and on "Major Factor Contributing to Most Serious Problem," 1975

	Percent Distribution
Most Serious Personnel Problem:	
Inadequate number of authorized positions	75
Inability to achieve or maintain authorized strength	6
High (excessive) turnover	3
Inadequate training of personnel	9
Inadequate representation of minorities or women	4
Other	3
Total	**100**
Number of reports	(239)
Major Contributing Factor:	
General budgetary problems	74
General lack of qualified applicants	1
Lack of minority or female applicants	*
Inadequate levels of compensation	8
Insufficient funds for training	5
Limited opportunites for advancement	*
Other	10
Total	**100**
Number of reports	(231)

* Less than .5 percent.
Note: Detail may not add to total because of rounding.
Source: NMS Executive Survey, 1975.

All defenders, other than those who reported that their agencies were already in full compliance with these requirements, were then requested to estimate the number of assistant defenders needed to achieve full compliance. On the average, they reported a need for 23 percent more defenders for this purpose. If this figure is adjusted for the proportion who felt that their existing staff was sufficient for full compliance with the Supreme Court requirements, this percentage increase is reduced to 18 percent. At the same time, defenders reported that actual employment of assistant defenders in their offices would increase by an average of about 7 percent in fiscal year 1976, or by about two-fifths of the increase reported as needed to fully meet Supreme Court requirements for indigent defense in their jurisdictions. These comparisons, by size of agency, are shown in Table II–18.

In addition to reliance on these subjective assessments by heads of defender offices, two alternative approaches were used in estimating defender manpower needs. The first consisted of comparing actual

TABLE II–18

Percent Increases in the Number of Assistant Defenders Reported as "Needed" by Chief Defenders to Fully Comply with Supreme Court Requirements and Percent Increases in Employment Expected in FY 1976, by Size of Agency

	Median Percent Increase Needed[a]	Percent Increase Expected
25 employees or more	24	8
10–24	22	6
5–9	30	6
1–4	4	2
All agencies[b]	23	7
Number of reports	(166)	(143)

[a] Based on reports from agencies not in "full compliance" with Supreme Court decisions.
[b] Weighted median.
Source: NMS Executive Survey, 1975.

caseloads per defender with standards proposed by the National Advisory Commission on Criminal Justice Standards and Goals. The NAC had recommended, in Standard 13.12, that defenders should have average annual workloads of no more than 150 felonies, and also specified equivalents in workloads, for misdemeanors, juvenile cases and appeals. Using the latter weighting factors, the actual felony equivalent caseload per full-time equivalent defender was found to be 192 in fiscal year 1975, for a limited sample of 48 defender agencies, which reported all the needed data for this computation (Table II–19). This is about 28 percent greater than the standard proposed by the NAC. It must be emphasized that this small sample is not necessarily representative of all defender agencies. The results may understate the actual caseloads per defender to the extent that better staffed agencies were more likely to maintain the necessary caseload data and to respond to the NMS survey. Moreover, the felony equivalent measure represents less than the total workload of these agencies. It excludes activities such as representation at probation/parole revocation hearings, mental health commitment hearings, and defense of criminal ordinance violations, which are engaged in—to some extent—by a large proportion of reporting agencies. Thus, the "true" workload per full-time defense attorney in these agencies is likely to be somewhat above the 192 felony equivalent cases per year, shown in Table II–19, and somewhat more than 28 percent in excess of the N.A.C. standard of 150 cases per year.

TABLE II–19

Percent Distribution of State and Local Indigent Defense Agencies by Number of Felony and Felony Equivalent Cases per Defender, 1975

Annual Cases Per Defender	Felony Cases Per Defender	Felony Equivalent Cases Per Defender[a]	Felony Equivalent Cases Per Full-Time Equivalent Defender[b]
Percent Distribution:			
25 or less	10	4	4
26–50	16	3	0
51–100	29	16	6
101–150	21	22	19
151–200	12	20	25
201–300	10	20	31
300 or more	2	15	15
Total	**100**	**100**	**100**
Median cases per defender	91	164	192
(Number of reports)	(116)	(112)	(48)

[a] Weighted average of felony, misdemeanor, juvenile, and appeals cases.
[b] Weighted average of full-time and part-time defenders.
Source: NMS Executive Survey, 1975.

The above estimates relate to the caseloads and staffing needs of public indigent defense agencies only. A more comprehensive approach should consider total requirements for legal counsel for defense of indigents, whether these are provided by public agencies, by contract or by assigned counsel procedures. Such estimates were developed by the National Legal Aid and Defense Association (NLADA) in its 1973 study of indigent defense activities. The NLADA analysis was premised on the provision of attorney services to indigents in accordance with the National Advisory Commission Standards 13.1 and 13.12. Standard 13.1 states:

> Public representation should be made available to all eligible defendants in all criminal cases at their request. . . . beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused on him as a likely suspect.[21]

Standard 13.12 states:

> . . . that defender caseloads per attorney should not exceed more than 150 felony cases per year, or 400 misdemeanor cases, or 200 juvenile cases or 25 appeals.[22]

Considering only the requirements for representation of indigents in felony and non-traffic misdemeanor trials and direct appeals, and in juvenile delinquency cases for actions which would be a crime if committed by an adult, the NLADA study estimated a need for about 17,300 staff attorneys in

defender agencies (public and contract) for the defense of indigents.[23] When further allowances are made for requirements for counsel following conviction, and in other types of cases which may result in confinement, such as certain traffic offenses and mental commitment hearings, the estimated overall requirement for defenders increased to about 28,000 full-time equivalent attorneys in defender agencies.

Finally, these computations assume that about one-fourth of the total indigent defense caseload will continue to be handled by assigned counsel systems. The latter would require the equivalent of an additional 9,000 full-time attorneys, thus raising the total full-time indigent defense counsel requirement to 37,000. This total is about six times as great as the estimated actual number of full-time equivalent lawyers engaged in indigent defense activities in 1974. The latter estimate, of 6,300 includes 3,300 defenders and assistant defenders in public defenders offices and 3,000 private defense attorneys—both on a full-time equivalent basis.

The above approaches have clearly yielded widely divergent estimates of defender manpower needs. Responses by defenders in public indigent defense agencies to the NMS survey indicated that only an increase of 18 percent in staff attorneys was needed by these agencies to fully comply with recent Supreme Court decisions. The analysis of caseloads per attorney for a small sample of these agencies, in relation to standards recommended by the NAC, yielded a somewhat higher estimate, in excess of 28 percent. In contrast, the NLADA estimates of the total "universe of need" for defender services indicated a requirement for a six fold increase in defenders, on a full-time equivalent basis.

Several factors probably contribute to this gross disparity. The major one appears to be that the NLADA analysis of requirements is based on the proposed standard providing that all indigents charged with a felony, misdemeanor or with juvenile delinquency are to be represented from the time of arrest. This standard is more inclusive than that required by recent Supreme Court decisions, with respect to the less serious offenses. Many arrested indigents do not receive representation at time of arrest and subsequently receive representation only if it appears that a jail or prison sentence may result from a conviction.[24] Additionally, indigents may waive their right to counsel without a full understanding of the significance of the action. There is a significant fall off in the number of persons charged with a crime, especially those charged with misdemeanors, in these early stages.

The chief defenders, on their part, appeared to have adopted a considerably narrower interpretation of their roles. In its 1973 study, the NLADA found that 36 percent of defender agencies provided counsel for all indigent misdemeanor defendants; 39 percent provided counsel only if the offense was punishable by jail; 18 percent only if the judge believed he would impose a jail sentence if the defendant was found to be guilty and 6 percent provided counsel only if the prosecutor would seek a jail sentence.[25] To the extent that the current local practice tends to keep marginal cases of indigency, or marginal cases of required representation, from becoming a workload for the defender or assigned counsel, the needs for additional staff as perceived by chief defenders may reflect a more limited view of the extent to which services are to be provided, than the one used by NLADA in its calculations of the universe of need for defender services.

F. Summary

Earlier in this chapter we cited a prevailing consensus among informed observers, to the effect that the Nation's adjudicative system was severely overloaded and that—in addition to other essential improvements—more and better-qualified personnel were needed in all the major categories of agencies comprising this system. These assessments were based on observed conditions prevailing at various times during the preceding ten year period, and reflected particularly the needs and problems of some of our larger metropolitan areas, which had borne the brunt of rapidly rising crime rates.

One of the central problems addressed by most of these preceding studies was the need for organizational reform and for introduction of modern management methods into the judicial process system. A symptom of this condition is the virtual absence of comprehensive data on agency workloads, which are essential for any systematic assessment of manpower needs. The National Manpower Survey was able to develop such data for partial—and not necessarily representative samples—of courts, prosecution and indigent defense agencies, in addition to obtaining judgments of agency administrators on their perceived manpower needs. These materials, and collateral information cited in this chapter—although still far from adequate—warrant the following tentative conclusions:

- Between 1970 and 1974 employment in judicial process agencies increased at a somewhat more

rapid rate than did the growth in crime-related caseloads, as measured by such partial indicators as the number of charges for Part I and Part II offenses and juvenile delinquency case dispositions. The relatively slow increase in both misdemeanor charges and juvenile delinquency cases suggests, particularly, some possible amelioration in the heavy pressures upon the lower, or limited jurisdiction courts during this period.

- Nevertheless, felony case backlogs, as well as civil case backlogs, in courts of general jurisdiction increased significantly—by 10 percent and 13 percent respectively—in fiscal year 1975, based on NMS survey reports. The estimated average period of time required to process the felony backlogs, estimated at about six months, provides one indicator of the large gap remaining in many court systems, between existing court capabilities and the norms specified in most speedy trial laws—which typically provide for a total elapsed period of 60 or 90 days, from initial filing to trial.
- Nearly one-half of all court administrators responding to the NMS survey, also reported that case delay was a serious problem in their courts. Only about one fourth of these specifically identified insufficient judicial personnel as the most important contributing factor, while others cited a variety of resource shortages and of procedural and personnel interaction problems. These responses reinforce collateral research findings to the effect that the accomplishment of speedy trial objectives requires an integrated management strategy and that provision of additional personnel alone may be a necessary—but not sufficient—condition, for reducing case delay in many court systems.
- Responses by chief prosecutors to questions concerning their agencies' manpower needs, as well as analysis of caseload ratios per prosecutor, indicate substantial needs for additional staff attorneys. Felony equivalent caseloads averaged 340 per full-time prosecutor in agencies with 10 or more employees, or nearly twice as great as in small offices, with less than 5 employees. This finding, in combination with the continued heavy reliance upon part-time attorneys in the smaller agencies, reinforces the need for both additional prosecution manpower and for more effective use of available resources, through consolidation of small offices.
- Although three-fourths of all public defenders responding to the NMS survey identified personnel shortages as their most critical manpower problem, estimates of additional defender requirements vary widely, depending upon the criteria employed. One approach, based on defender responses to a query concerning staff needs to assure full compliance with recent Supreme Court decisions, resulted in an estimated need for an increase of 18 percent in defender staffs in these agencies. However, a broader construction of the defender role, based on early involvement of defenders in all categories of cases involving a possibility of confinement, resulted in an estimated six-fold increase in defender staffing needs.

NOTES AND REFERENCES

1. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (1973), pp. 1, 7–8. (Hereinafter referred to as NAC, *Courts*).
2. National Commission on Law Observance and Enforcement, *Report on Prosecution* (1931).
3. The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Courts* (1967).
4. Crime Control Act of 1973, Section 402(c) provides: "The Institute shall survey existing and future personnel needs of the Nation in the field of law enforcement and criminal justice and the adequacy of Federal, state and local programs to meet such needs. Such survey shall specifically determine the effectiveness and sufficiency of the training and academic assistance programs carried out under this title and relate such programs to actual manpower and training requirements in the law enforcement and criminal justice field."
5. The Common Law does not permit criminal verdicts other than guilty or not guilty. In Scotland and some continental European countries a verdict of "not proven guilty" is possible. Thus, the statement above is really a legal fiction, based upon the presumption of innocence. In practice, Common Law courts can only distinguish between those proven guilty beyond a reasonable doubt, and those not so.
6. *Argersinger v. Hamlin* 407 U.S. 5 (1972) required appointment of counsel in all cases where defendant cannot afford counsel and a sentence to improvement is imposed. If a sentence to probation is imposed without the assistance of counsel, and later that sentence is used as the basis to revocation to imprisonment, the cases split on whether the second sentence is valid under *Argersinger*.
7. Most states also allow appeals from pleas of guilty. See ABA, *Standards Relating to Criminal Appeals* (1970) Standard 1.3a (iii). The extent to which the plea process itself is often limited, however. For example, where a pretrial motion is decided, adverse to the defendant, that being the only litigatable issue, the defendant may wish to plead guilty but appeal the interlocatory decision. Only a few states seem to permit this. *Id.* Standard 1.3(b). See *Cooksey v. State* 524 P.2d 1251 (Alka Sup. Crt. 1974).

8. Omitted from this discussion of pre-trial procedure is the availability of a pre-trial diversion alternative to formal prosecution. Based upon the operations of prosecutorial discretion, pre-trial diversion may be described as the linkage of "deferred prosecution" of temporary suspension of prosecution with program assistance to arrestees, such as employment assistance, counseling or drug treatment alternatives.
9. *Williams v. Florida*, 399 U.S. 78 (1970) in *Baldwin v. New York*, 399 U.S. 66 (1970) the Court held that a jury trial is required in all cases involving more than a six month jail term for those defendants requesting a jury trial.
10. *Johnson v. Louisiana*, 406 U.S. 356 (1972); in *McKeever v. Pennsylvania*, 403 U.S. 5 8 (1971) the Court held that a jury trial is not required in juvenile proceedings.
11. Kenneth Cruce Smith, "A Profile of Juvenile Court Judges in the United States." *Juvenile Justice* (August 1974).
12. National Legal Aid and Defenders Association, *The Other Face of Justice* (1973), p. 13.
13. American Judicature Society, *Courts of Limited Jurisdiction: A National Survey* (1974).
14. Lucinda Long, "Organization and Innovation in Urban Misdemeanor Courts." (Unpublished dissertation, Johns Hopkins University, 1976), pp. 45, 46, 50.
15. NAC, *Courts*, p. 229.
16. Cited by Edward B. McConnell in American Bar Association, *The Improvement of the Administration of Justice* (1971), p. 31.
17. Part I crimes include homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft and motor vehicle theft. All other offenses are Part II crimes. The major components of Part II offenses, in terms of number of persons charged, were drunkenness, driving under the influence, disorderly conduct, violations of narcotic drug laws, and assaults other than aggravated assaults.
18. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).
19. A detailed analysis of court caseload and staffing data based on the National Manpower Survey court survey is being prepared as a supplementary report and is scheduled for completion early in 1977.
20. Martin A. Levin, "Delay in Five Criminal Courts." *The Journal of Legal Studies* 4 (January 1975); Lewis R. Katz, Lawrence B. Litwin and Richard H. Bamberger, *Justice is the Crime, Pre-Trial Delay in Felony Cases* (Case Western Reserve University, 1972).
21. NAC, *Courts* (1973), p. 53.
22. *Ibid.*, p. 76.
23. National Legal Aid and Defender Association, *The Other Face of Justice* (1973), pp. 70–73.
24. NLADA, p. 24 and pp. 34–40.
26. NLADA, p. 22.

CHAPTER III. THE OUTLOOK FOR EMPLOYMENT IN JUDICIAL PROCESS AGENCIES: MANPOWER PROJECTIONS TO 1985

A. Introduction

One of the major tasks of the National Manpower Survey is to project future personnel needs of state and local criminal justice agencies, by occupation, for a 10-year period to 1985. These projections and related estimates of recruitment and training needs are in turn designed to assist in determining the relative priorities for academic and training assistance among various sectors and occupations in the criminal justice system.

The estimates presented in this chapter portray the probable future trends in employment of judicial process personnel. They are not an attempt to estimate "optimal" requirements for such personnel. A goals-oriented manpower projection for judicial manpower is neither considered practicable nor realistic as a basis for program planning.

The initial section of this chapter describes the basic assumptions, or scenario, which served as the basis for the manpower projections. (The more technical methodology, including a description of the National Planning Association's Criminal Justice Manpower Projections Model, is presented in Volume VI, Criminal Justice Manpower Planning.)

The second section presents the NPA projections of judicial process employment, by agency category and occupation.

The third section reviews a number of specific issues or trends affecting judicial process agencies and separately assesses their possible manpower implications.

B. The Projection Scenario

The basic premise underlying the NPA Manpower Projection model is that the future demand for adjudication and other criminal justice services will be largely determined by two key factors, in addition to population growth. These are: (1) the future trend in crime rates, and (2) trends in the growth of total budget, or fiscal capacity, of state and local governments, as measured by their projected total expenditures for all purposes. In other words, as in the case of the demand for other products or services, the future need for criminal justice services and the community's willingness or ability to pay for these services will jointly affect future employment trends.

Both crime rates and the levels of government spending are, in turn, influenced by a large number of social, economic, and institutional factors. In the case of crime rates, recent analyses of criminal behavior, in contrast to earlier criminological studies, have attempted to interpret most forms of crime within a rational decision-making framework: individuals are more likely to pursue criminal careers, rather than legal activity, if the economic returns from crime are perceived to be better than the alternatives available to them, after allowing for the risks entailed in criminal activity. Thus, those who are poor, unemployed and economically disadvantaged are more prone to engage in crimes such as robbery because they have less to risk and because their alternative ways of earning a livelihood are so restricted. Large urban centers, which include both concentrations of poor, minority populations as well as concentrations of wealth—i.e., "crime opportunities"—are thus more prone to higher crime rates than are smaller, more homogenous, middle-class communities. Youth, and particularly disadvantaged youth, are much more crime prone—both because they have the highest unemployment rates and the most limited earnings potential in legal pursuits, and because they are more likely to take risks than more mature individuals. However, to the extent that criminal justice agencies increase the risks of apprehension and punishment, they increase the "costs" of criminal activity and serve to deter crime.

The above analysis suggests some of the key variables that may affect future crime trends. Among them are future trends in the level of general economic opportunity, as measured by such factors as the unemployment rate and per capita income, trends in the proportion of youth in the population, and trends in the concentration of population in urban areas. In addition, community investments in

judicial process and other criminal justice agencies can affect these trends to the extent that they increase the probabilities that those apprehended will be dealt with promptly and fairly. These and similar variables have all been found to contribute significantly to an explanation of variations in reported crime rates.

Among these factors, one of the most important—and predictable—is the proportion of youth in our population. The sharp escalation of crime rates in the mid-1960's coincided with the "coming of age" of the large, post-World War II, baby-boom generation. During these years, juveniles and younger adults accounted for a large and growing share of those apprehended for many categories of serious crime. The outlook now is for a reversal of this trend. In the past decade and a half, rapid growth in the number of youths and young adults, aged 15–24 years, increased that group from 13.4 percent of the population in 1960 to 18.7 percent in 1974. This proportion will stabilize in the period 1974–80, and will drop significantly to 16.4 percent by 1985.

Another demographic factor—the proportion of our population concentrated in metropolitan areas—is also expected to decline, resulting eventually in a lower crime rate. Over a period of decades, the proportion of our population concentrated in large metropolitan areas has steadily grown—and these areas have experienced the highest crime rates. This pattern now appears to have been reversed. In the 1970's the proportion of the population living in SMSA's has declined steadily from 68.6 percent in 1970 to 67.2 percent in 1974. A continuation of the recent decline is assumed in our scenario. This population shift may be accompanied by growing crime rates in outlying areas—a pattern already suggested by recent trends in crime statistics.[1] However, in view of the very sharp differences in crime rates among communities of different sizes, the net effect is expected to be favorable.

Other factors affecting the future demand for criminal justice services can be projected with much less confidence than the demographic trends described above. The most critical of these is the future state of the nation's economy. The overall level of economic activity, as measured by such statistics as the gross national product (GNP), has a direct impact on governmental tax revenues and hence on the ability of state and local governments to expand public employment. It also has a significant effect upon crime rates, in view of the observed direct relationship between unemployment and crime. However, despite the development of increasingly sophisticated economic models, any long-term projections of the nation's economy are subject to large potential error, simply because they entail numerous assumptions concerning future national fiscal and economic policies, as well as international economic and political conditions.

The economic scenario followed in the NMS manpower projections is based on the National Economic Projections Series of the National Planning Association. These projections provide short-term forecasts of probable economic trends to 1980 and are designed to portray an attainable growth path for the economy beyond 1980, resulting in relatively full employment by 1985. The short-term economic outlook provides for a relatively low average GNP growth rate of 2.7 percent annually (in constant dollars) during the period 1974–80, reflecting only partial recovery from the 1974–76 recession. This is followed by a substantially higher GNP growth rate of 4.2 percent annually during the period 1980–85, concurrent with a projected reduction in the unemployment rate from about 7 percent in 1980 to 5 percent in 1985.

The above demographic and economic trends imply the following outlook for the key controlling variables affecting prospective judicial process agency employment:

- *The crime rate*, as measured by the FBI Index for Serious (Part I) Offenses, is expected to continue to grow between 1974 and 1980 due, in part, to the continued high average unemployment levels projected for this period. Its projected average growth rate of 1.8 percent per year between 1974 and 1980 is much lower than for recent periods, however, as a result of the stabilization of the proportion of youth in the population. A significant decline in the crime rate is projected for the period 1980–85, at a rate of −3.9 percent annually, reflecting mainly the combined effect of the reduction in the proportion of youth in the population and the assumed reduction in unemployment. Other factors contributing to the anticipated decline in the crime rate are the projected increase in criminal justice expenditures and employment (discussed below) and the likely trend towards a reduction in the proportion of the total population living in metropolitan areas.
- *Total state and local expenditures*, the index of the general ability of these governments to pay for criminal justice services, are projected to grow at a relatively low annual rate of 3.3

percent between 1974 and 1980, in constant dollars. This is a continuation of the slow rate of increase experienced in recent years. For example, these expenditures grew at an annual rate of 5.0 percent between 1965 and 1970, in constant dollars, reflecting the growing revenues of state and local governments during the latter period, rising costs, and growing community demands for a wide range of public services. The rate slowed to 3.2 percent in 1971–74, and approximately the same rate is projected through 1980. A more rapid growth of these expenditures, at a rate of 4.8 percent per year, is projected for 1980–85, reflecting the assumed recovery to a high employment economy by the latter year.

- *Criminal justice expenditures by state and local governments*, for all categories of criminal justice agencies are projected to increase by 52 percent, in constant dollars, between 1974 and 1985. A growth rate of 4.3 percent per year is projected between 1974–80. This rate of growth is considerably higher than the projected growth rate of 3.3 percent for total state and local expenditures—reflecting the effect of the continued growth in crime rates and the consequent high priority assigned by most communities to law enforcement and related services. During the 1980–85 period, the projected growth in criminal justice expenditures is expected to decrease to 3.5 percent per year. Despite the projected annual growth in total state and local expenditures of 4.8 percent during this period, a lower projected crime rate is expected to reduce the growth in demand for criminal justice services during this period.

C. Employment Projections

In addition to the effect of the projected overall trends in crime rates and governmental expenditures, described above, the outlook for employment in the judicial process agencies will be influenced by a number of more specific trends for each of the major categories of agencies. The aggregate projections of employment for these agencies—as a share of total projected criminal justice employment—as well as the growth trends for specific categories of agencies, were based primarily on trends during the period 1971–74. As shown in Table III–1, employment in the judicial process sector, as a whole, had increased by 25 percent during this period, from 140,000 to about 175,000, in terms of full-time equivalents—a significantly more rapid growth rate than for other major categories of criminal justice agencies. This compares with increases of 18 percent in correctional agencies and 14 percent in law enforcement agencies over the same period. The relatively rapid growth rate in the judicial process sector reflected both the continued growth in adjudicative workloads during this period, and increased public emphasis upon the need to reduce case delay, resulting from the past growth in case backlogs. Supreme Court decisions which broadened the requirement for provision of counsel to indigent offenders, as well as a sharply growing volume of civil litigation—including such relatively new areas as consumer protection and environmental protection—also contributed to this overall employment growth.

The NMS employment projections provide for continued relatively rapid employment growth of judicial process agencies to 1985. Total full-time equivalent employment in this sector is expected to increase by 62 percent, from 175,000 in 1974 to 283,000 in 1985, as compared to a projected employment growth of 43 percent for all categories of law enforcement and criminal justice agencies. The projected annual rate of growth will, however, decline from 7.8 percent, in 1971–74, to 5.3 percent in 1974–80 and 3.5 percent in 1980–85, due to the combined effects of fiscal constraints upon state and local governments and the projected slowdown in crime rates, particularly, between 1980 and 1985. The projections for each of the major categories of adjudicative agencies are summarized, separately, below.

1. *Courts.* Employment in all state and local courts is projected to increase by 54 percent, from 118,000 full-time equivalent employees in 1974, to 183,000 in 1985. The overall rate of employment growth, in the courts, is expected to be lower than for prosecution and indigent defense agencies, based on trends during the 1971–74 period. As shown in Table III–2, the most rapid employment growth is projected for appellate level and general jurisdiction courts, with much lower rates of employment increase anticipated for the limited jurisdiction courts. The lower courts are expected to increase their employment at an average annual rate of 2.9 percent between 1974 and 1985, as compared to projected growth rates of 5.4 percent for general jurisdiction courts and 6.5 percent for appellate courts.

The relatively slow employment growth anticipated for limited jurisdiction courts is associated with two trends, discussed in more detail later in this

TABLE III–1

Employment in State and Local Judicial Process Agencies: Actual: 1971, 1974; Projected: 1980, 1985

Type of Agency	Employment (000)[a]				Percent Change		Annual Growth Rate		
	Actual		Projected						
	1971	1974	1980	1985	1971–1974	1974–1985	1971–1974	1974–1980	1980–1985
Total	**139.6**	**174.7**	**237.9**	**282.5**	**25**	**62**	**7.8**	**5.3**	**3.5**
Courts	99.7	118.4	154.8	182.6	19	54	5.9	4.6	3.4
Prosecution and legal services	34.1	45.4	66.0	78.8	33	74	10.0	6.4	3.6
Indigent defense[b]	5.7	11.3	17.1	21.1	98	87	25.6	7.1	4.3

[a] Full-time equivalents.

[b] Includes both public employees and estimated number of persons providing publicly-funded defender sercices on a contract basis or as assigned counsel, in full-time equivalents.

Sources: Actual employment from LEAA/Census, *Expenditure and Employment Data for the Criminal Justice System*, 1971, 1974, and NMS estimate for total indigent defense employment. Projected employment from NMS model. (See text and Volume VI, Criminal Justice Manpower Planning).

chapter. The first is the relatively slow recent growth in caseloads associated with Part II offenses, and in juvenile delinquency cases, which—in combination have accounted for a major portion of lower court workloads. In part, these result from revisions in arrest policies and practices, resulting in *de jure* or *de facto* decriminalization of certain categories of offenses, such as public drunkenness. In part, they reflect increased reliance upon pre-trial diversion programs, particularly for juveniles and other first offenders.

The second trend has been the continued movement towards consolidation or unification of lower-level courts. During the 1971–73 period, four states abolished their lower courts oy integration of their functions into the general jurisdiction courts, two states moved toward creation of a single tier of lower courts and four states reduced the number of lower courts. One of the objectives of these reorganizations has been to achieve increased efficiencies in utilization of court manpower. Available evidence indicates that this has in fact resulted. An analysis of employment trends between 1971 and 1974 indicates that state court systems which had achieved higher levels of unification of their court systems experienced significantly lower rates of employment growth in their courts of limited jurisdiction during this period than did other states (Table III–16). Thus, the employment projection for these courts assumes a continuation of this trend in the period 1974–1985.

The overall growth in courts employment is likely to be accompanied by a significant increase in the ratio of support personnel to judges, if recent trends persist. Between 1971 and 1974 the number of judges in general jurisdiction courts grew at about half the rate of total employment in these courts. Similarly,

TABLE III–2

Employment in State and Local Courts, by Type of Court: Actual: 1971, 1974; Projected: 1980, 1985

(Full-time equivalents in thousands)

	Actual		Projected		Average Annual Growth Rates	
	1971	1974	1980	1985	Actual 1971–74	Projected 1974–85
Total	**99.7**	**118.4**	**154.8**	**182.6**	**5.9**	**4.0**
Appellate courts	3.3	4.4	6.7	8.8	10.1	6.5
General jurisdiction courts	34.3	43.5	62.1	77.5	8.2	5.4
Limited jurisdiction courts	48.5	54.8	66.5	74.8	4.2	2.9

Sources: Data for 1971 and 1974 are from LEAA/Census, *Expenditure and Employment Data for the Criminal Justice System*.

TABLE III–3

Actual and Projected Employment of Judges and Support Personnel in Appellate and General Jurisdiction Courts, 1974–85

	Employment			Percent Change	Average Annual Growth (Percent)	
	Actual*	Projected				
	1974	1980	1985	1974–85	1974–80	1980–5
Appellate and general jurisdiction courts	47,800	68,800	86,200	80	6.3	4.6
Judges	6,160	7,480	8,380	36	3.3	2.3
Support personnel	41,640	61,230	77,820	87	6.8	4.9

* Total employment from LEAA *Expenditures and Employment Data for the Criminal Justice System*, 1974. Includes an estimate for general jurisdiction courts, based on reports from 312 large counties.

Number of judges based on Council of State Governments, *State Court Systems Revised 1974*, April 1974, includes an estimate to adjust to an October 31, 1974 date.

the number of judges in appellate courts grew at about one-fourth the rate of total employment. A number of factors probably contributed to the slower growth of judges than of support personnel. Judicial positions usually are established by state legislatures and require passage of new legislation which is frequently a slow process. Consequently, with the growth in workloads and pressure for speedy trials, adjustments were more easily made by increasing the number of parajudicial and of administrative and other support personnel, to facilitate improved calendar management and to accomplish better utilization of available judicial manpower. Based on an assumption that these trends will continue in the 1974–85 period, the ratio of support personnel per judge in general jurisdiction and appellate courts is expected to increase from less than 7:1, in 1974, to more than 9:1, in 1985. Employment of judges in appellate and general jurisdiction trial courts is expected to grow from about 6,200 in 1974 to 8,400 in 1985 or by 36 percent, as compared to a growth of 87 percent in support personnel over this period.

2. *Prosecution and legal services.* Total full-time equivalent employment in state and local prosecution and legal service agencies is expected to increase from 45,400 in 1974 to 78,800 in 1985 (Table III–4). The projected growth rate between 1974–85, of 5.1 percent annually, is expected to be about half as great as that experienced between 1971–74, mainly because of the anticipated slow down in growth of the crime rate. Growth of state-level prosecution and legal service agencies is projected at a more rapid rate than for county or city agencies, in line with the more rapid growth of the former agencies between 1971 and 1974. By 1985, state government agencies are expected to account for about 31 percent of all personnel in this function, as compared to 26 percent in 1974.

The more rapid growth of state-level agencies appears to be due to a combination of factors. Although local government agencies still bear the primary responsibility for criminal prosecution in all but a few states, there has been a trend towards strengthening of the role of the state's attorney general, in coordination or supervision of certain local prosecution activities and in provision of technical assistance or training. Thus, the number of state attorneys assigned specifically to crime units rose by 62 percent, from about 390 in 1972 to 630 in 1975, according to a survey by the National Association of Attorneys General.[2] However, attorneys in crime units still represented only 15 percent of all attorneys employed in these state agencies in 1975. A major portion of the recent increase appears due, therefore, to rapid expansion of employment in state legal service courts concerned with civil functions, including such activities as consumer protection,

TABLE III–4

Employment in State and Local Prosecution and Legal Services Agencies: Actual, 1971, 1974; Projected, 1980, 1985

	Full-Time Equivalent Employment (000)				Average Annual Growth Rates	
	1971	1974	1980	1985	1971–74	1974–85
Total	34.1	45.4	66.0	78.8	10.1	5.1
State	8.1	11.8	19.2	24.3	13.4	6.8
Local	26.0	33.6	46.8	54.5	8.9	4.5

Source: Data for 1971 and from Census/LEAA, *Expenditures and Employment Data for Criminal Justice Agencies*. Estimates for 1980 and 1985 from the NMS Projection Model of the Criminal Justice System.

environmental protection and anti-trust units. A continuation of these trends is assumed in the projections to 1985.

The occupational projection for prosecution and legal services agencies was based on recent trends in growth of legal and nonlegal (support) staffs and on responses to the NMS surveys. Chief prosecutors responding to the NMS executive survey indicated an expected increase of 5.9 percent in their employment of attorneys and a 5.5 percent increase in support personnel for 1975–76. During the three-year period between 1972 and 1975, the number of attorneys in state attorneys general offices grew at a faster annual rate than employment of support personnel. At the local level the occupational distribution is assumed to remain the same as 1974.

The resulting occupational projections for all state and local prosecution and legal services agencies indicate a relatively rapid growth in employment of attorneys as prosecutors or assistant prosecutors or performing other legal duties, from 19,300 in 1974 to about 37,000 in 1985, or by more than 90 percent, whereas support categories of personnel, including investigative, clerical, paralegal, and other staff, are expected to experience an employment growth of about 50 percent during this period (Table III–5).

3. *Indigent defense activities.* In 1974, approximately 6,000 employees were reported as directly employed in public defender agencies on a full-time equivalent basis. However, many more individuals were employed to provide defense services either through some form of contractual agreement or assigned counsel system. Based on reported total expenditures for indigent defense in 1974, and on the assumption that contract personnel received the same average earnings as those employed directly in public indigent defense agencies, it is estimated that the services of an additional 5,000 full-time equivalent individuals were provided to state and local defender agencies in 1974 through contractor or assigned counsel arrangements.

TABLE III–5

Occupational Distribution of Employment in Prosecution and Legal Services: 1974, 1980, 1985

(Full-time equivalent employees, in thousands)

	Actual 1974	Projected		Percent Change 1974–85
		1980	1985	
Total	**45,400**	**66,000**	**78,800**	**73.6**
Prosecutors and other attorneys	19,300	30,200	37,100	92.2
Investigators	7,100	9,700	11,100	56.3
Paralegals	1,100	1,500	1,700	54.5
Clerical	14,200	19,500	22,400	57.7
Other	3,700	4,900	5,600	51.4

In 1972, the Argersinger vs. Hamlin decision mandated that indigent misdemeanor and petty offenders could not be subjected to imprisonment if found guilty, unless they had been afforded the opportunity of having legal counsel. The provision of counsel to indigent offenders who fall within these Supreme Court guidelines becomes a public responsibility. Recent employment patterns are of particular interest, then, to the extent that they provide an indication of the directions in which defender agencies are moving and the pace at which employment is growing to accommodate this increased workload. Between 1971, prior to the Argersinger decision, and 1974, employment of defenders in public agencies increased by 68 percent, while estimated contract or government-funded employment increased by 127 percent, with most of this growth at the state level (Table III–6). Thus, it appears that, while employment in publicly administered defender offices was increasing at a rapid rate, there was greater growth in the use of assigned counsel and other contractual arrangements.

Total indigent defense employment is projected to almost double by 1985. This is a substantially slower rate than was evidenced during the period 1971 through 1974, a period in which many defender agencies were established. We can expect a slower growth rate in the future as the rate of increase in criminal justice expenditures decreases and as the number of defender agencies stabilizes.

Although we are projecting slower future employment growth for the indigent defense function than in 1971–74, it is expected that the recent patterns of growth—more rapid at the state level and increased use of nonpayroll employees—will hold in the future. It is expected that in 1985, there will be 10,000 employees on public payrolls and an additional 11,000 individuals who provide defense services on a contractual basis with government funding (Table III–7).

Available evidence indicates that no significant change in the ratio of support personnel to attorneys is expected among employees in public defender offices. Executives responding to the NMS survey of chief defenders indicated they expect employment of attorneys and support personnel to grow at the same rate (6 percent) for 1975–76. Therefore, these projections assume that the occupational distribution of employees on public payrolls will remain about

TABLE III–6

Indigent Defense Expenditures and Employment, by Level of Government, 1971–74

(Employment estimates in full-time equivalents)

	Total			State			Local		
	1971	1974	Percent Change	1971	1974	Percent Change	1971	1974	Percent Change
Expenditures (millions)	67.5	153.0	126	16.5	51.7	213	51.0	101.3	99
Total employment (thousands)	5,700	11,300	98	1,500	4,300	186	4,200	7,000	67
Public payroll	3,500	5,900	68	1,000	2,600	160	2,500	3,300	32
Contract (est.)	2,200	5,400	127	500	1,700	240	1,700	3,700	118

Source: Census/LEAA, *Expenditures and Employment Data for Criminal Justice Activities*, 1971, 1974.

the same as in 1974. Table III–8 shows the current and projected occupational distribution for these agencies.

Although the above projections have been presented in a relative precise form, they are, of course, subject to considerable margins of uncertainty. These stem, in part, from the limitations of available data on current and past employment in the various categories of judicial process agencies and from the absence of any comprehensive national data on adjudicative workloads. More fundamentally, the courts system, because of its central role in the criminal justice process, has been subject to intense, and often, conflicting pressures in the past decade. The most visible of these pressures have been those generated by mounting criminal and civil caseloads and from resulting problems of case delay. The goal of speeding up the adjudicative process in criminal cases was given high priority in the report of the National Advisory Commission on Standards and Goals, as well as in other recent public critiques of the existing system. In addition to improvements in court organization and management, recommendations designed to expedite the adjudicative process have included proposals for decriminalization of certain categories of offenses and of diversion of certain types of offenders, as means of reducing courts and correctional workload.

TABLE III–7

Projected Employment for Indigent Defense Function, 1974, 1980, 1985

	1974	1980	1985
Total employment	11,300	17,100	21,100
On public payrolls	5,900	8,000	10,200
Other	5,400	9,100	10,900

TABLE III–8

Current and Projected Occupational Distribution of Employment in Public Defender Agencies

(Full-time equivalent employees)

Occupation	1974	1980	1985
Total public employees	5,900	8,000	10,200
Defenders	3,200	4,340	5,540
Investigators	760	1,030	1,310
Support	1,940	2,630	3,250

At the same time, recent social trends have imposed greater responsibilities than ever before upon adjudicative agencies, designed to assure a fair and evenhanded administration of justice to all those involved in the system. In addition to the Supreme Court decisions imposing increased obligations on public authorities to provide counsel to indigent persons, these have been reflected in proposals for better regulation—or elimination—of existing plea bargaining practices. To the extent that the system has, or will, respond to the latter pressures, the effect could be to further increase judicial process workloads and manpower needs.

These pressures—and the responses to those pressures—have varied widely among the various states and jurisdictions. All have important potential manpower implications. The employment projections presented in this chapter have simply assumed that the net employment effect of these changes will be similar, in direction, in the period to 1985, to that observed in the recent year.

Several of the most significant of those trends, or proposed changes, were, however selected for more detailed analysis. These included decriminalization, pre-trial diversion programs, plea bargaining reform and court reorganization. The results of these analyses are presented in the following section of this chapter.

D. Analysis of Selected Criminal Justice Issues and Trends

1. *Decriminalization.* A large number of behaviors subject to criminal prosecution under existing laws deal with such offenses as public drunkenness, narcotics and drug abuse, gambling, prostitution, and sexual deviance. Offenses of this type impose a very substantial workload upon the police, the lower courts, prosecutor offices, and the jails. Although these activities contravene existing moral codes and standards of behavior, in most cases the sole victim is the offender himself. As recently as 1969, arrests for offenses of this type constituted about one-half of all arrests of police agencies and were a significant workload factor, especially in the lower courts.

Advocates of law reform have therefore proposed that certain of these offenses be "decriminalized" and handled, where appropriate, by agencies outside of the criminal justice system. Such recommendations have frequently been made with respect to drunkenness, gambling, possession of small amounts of marijuana, and certain types of sexual deviancy.[3]

Of these offenses, formal "decriminalization" actions through appropriate changes in legal codes have been mainly confined to public intoxication. Following a long line of Supreme Court decisions, criminal charges related to excess use of alcohol with no harm to others have been altered or eliminated in a number of jurisdictions. In addition—on a more extensive basis—arrest policies have been modified by police and prosecutors to reduce arrests for certain types of offenses in order to concentrate their resources on more serious crime or, in some cases, because crowded jails and court calendars have dictated such action.

For this reason, the NMS queried prosecutors concerning the extent to which arrest policies have been changed in their jurisdictions for specified offenses in the past five years (either through legislative, judicial, or administrative actions), and about the effect of these changes on the number of arrests. The results indicate that, where changes had occurred, the effect of the changes was predominantly to reduce arrests, particularly for such offenses as public intoxication, marijuana possession, and sale of pornographic material (Table III–9).

These responses by executives can be compared with actual trends in arrest rates for certain offenses since 1970 as reported to the FBI. These data indicate a net reduction in the number of arrests for 10 "victimless" crimes from 3,963,000 in 1970 to 3,664,000 in 1974 (see Table III–10). A more detailed analysis indicates sharp reductions in both gambling and drunkenness arrests but increases in prostitution and marijuana arrests over this period. Arrests for all such crimes, exclusive of narcotics offenses, declined from 43.7 percent of total arrests in 1970 to 33.1 percent in 1974.

While the declining trend in arrests for these high-frequency categories of offenses has been clearly documented, the effect of this trend upon manpower requirements for judicial process agencies appears to have been limited to date. When queried about the effects of revised arrest practices upon their manpower requirements, only between 12 percent and 16 percent of prosecutors who reported decreased ar-

TABLE III–9

Changes in Arrest Policies for Specified Offenses, and Effects on Number of Arrests, 1970–74, as Reported by Chief Prosecutors

(Percent distribution)

Offense	Total	Arrest Policies Changed			Arrest Policies Unchanged
		Arrests Decreased	Arrests Increased	Arrests Not Changed	
Public intoxication	100	42	9	8	40
Possession of small amounts of marijuana	100	38	18	12	32
Prostitution	100	12	4	18	66
Homosexual acts between consenting adults	100	20	1	15	64
Selling pornographic material	100	24	5	16	56
Gambling	100	15	9	18	57

Detail may not add to total because of rounding.
Source: NMS Executive Survey, 1975.

TABLE III–10

Arrests for Victimless Crimes, 1969–1974[a]

Year	Number of Arrests for "Victimless" Crimes	Victimless Crimes, as Percent of Arrests for All Crimes		
		All "Victimless" Crimes	Narcotics	"Victimless" Crimes, Less Narcotics
1970	3,963,000	48.8	5.1	43.7
1971	4,066,000	47.2	5.7	41.5
1972	3,841,000	44.1	6.1	38.0
1973	3,891,000	43.1	7.0	36.1
1974	3,664,000	40.1	7.1	33.1

[a] Victimless crimes include drunkenness, disorderly conduct, narcotic drug laws, liquor laws, runaways, curfew and loitering, gambling, vagrancy, suspicion, and prostitution.

Source: U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Report, 1974.*

rests as a result of policy changes indicated that this change had reduced their offices' manpower requirements (Table III–11). This may be attributable to the fact that, in many jurisdictions, county and state prosecution offices play a limited role in prosecution of such offenses. Many are summarily disposed of by local police and magistrates, or by juvenile courts, without any direct involvement of either prosecution or defense attorneys. In large urban jurisdictions, responsibility for handling misdemeanors or similar minor offenses is often assigned to the city attorney's office, rather than that of the district attorney or prosecutor. Hence such cases may, in fact, account for a negligible proportion of the total workload of the prosecutor's office.

It is probable, therefore, that the primary beneficiaries of the reduction in arrests for certain victimless offenses have been the lower courts, in which these cases are mainly handled. Some confirmation

TABLE III–11

Chief Prosecutors' Assessments of Effects on Manpower Requirements for Agencies Reporting Decreased Arrests for Specified Offenses

(Percent distributions)

	Total	No Change	Reduced Requirements	Increased Requirements
Public intoxication	100	85	12	3
Marijuana	100	84	14	2
Prostitution	100	83	15	2
Pornography	100	83	16	1
Homosexual acts	100	84	13	3
Gambling	100	86	13	1

Source: NMS Executive Survey, 1975.

is provided by the fact that employment in municipal courts increased by only 10 percent between 1971 and 1974, as contrasted to increases of 19 percent and 24 percent in state and county courts, respectively. As noted earlier in this chapter, the NMS projections provide for a slower employment growth in the lower courts, which is consistent with an assumed continued reduction in arrests and prosecutions for such offenses.

2. *Pre-trial diversion.* Diversion, as it has been defined by the National Advisory Commission on Criminal Justice Standards and Goals, is the halting or suspending of formal criminal or juvenile justice proceedings against an individual who has violated a criminal law, in favor of processing through a noncriminal disposition. Forms of diversion are practiced, often quite informally, by all components of the criminal justice system. As examples, police may exercise discretion in determining whether formal charges should or should not be brought against an individual. Intake workers in juvenile court may divert children who in their judgment could be better served by social and rehabilitative measures rather than formal and usually punitive court processing. Prosecutors may screen out cases which they judge to be minor or nonharmful behavior. Even following adjudication, judges and corrections officials have options for the use of treatment rather than punitive alternatives. The National Advisory Commission endorsed diversion, in "appropriate cases," both as a means of compensation for the tendency of criminal codes to result in "overcriminalization" in certain offense categories and because diversion broadens access to community resources for rehabilitation of offenders.[4]

Although diversion may occur at any stage of a criminal proceeding, the greatest workload effects should be on the courts. Traditionally the burden of determining guilt or innocence and sentencing rests with courts. The ability to utilize diversion as an alternative might be expected to contribute to reducing court backlogs and delay.

The major forms of diversion being practiced today are:

- Pre-trial diversion
- Alcohol and drug diversion
- Juvenile diversion
- Mental health treatment alternatives
- First offender programs

In general these programs provide that the accused enter into supervised activities such as job training, regular employment or rehabilitative services in the

hope that this will encourage constructive, noncriminal behavior. The offender is subjected to specified controls, but is not prosecuted in the courts or incarcerated.

The extent of formal pre-trial diversion programs and their manpower effects were probed in the NMS surveys of probation and parole chiefs, prosecutors, and defenders.

- About 34 percent of chief probation-parole officers reported the availability of adult pre-trial diversion programs other than deferred prosecution in their jurisdictions. Apart from probation-parole offices, the agencies most frequently cited as administering these programs are the courts and prosecutors' offices. For juveniles, informal probation or consent degree programs appear to be most common. There appears to be a definite expectation of greater participation and utilization by probation agencies of pre-trial diversion programs. About 30 percent of the agency executives expect an increase in the assignment of probation/parole officers to diversion programs in the next two years while only about 2 percent expect a decrease.
- About 40 percent of the prosecutors reported that pre-trial diversion programs operated in their jurisdiction and 13 percent or more said that such programs were administered by their offices. The presence of formal pre-trial diversion programs in a jurisdiction tends to increase with the size of the agency. Thus, three-fourths of prosecution agencies with 25 or more employees operated such programs (Table III–12).

When queried about the effects of pre-trial diversion programs upon agency workloads, a large majority of both prosecutors and defenders who reported that such programs were in effect, indicated

TABLE III–12

Operation of Formal Pre-Trial Diversion Programs in Prosecutors' Offices by Size of Agency

Status of Pre-Trial Diversion	Size of Agency—Number of Employees				
	1–4	5–9	10–24	25–74	75+
	(Percent of All Replies)				
Operating	32	45	52	70	81
Planned	9	12	15	13	13
Not operating	59	43	33	17	6
Total	100	100	100	100	100
Number of reports	(697)	(249)	(134)	(61)	(52)

Source: NMS Executive Surveys, 1975. (N = 1193)

TABLE III–13

Effect of Pre-Trial Diversion Programs on Workloads of Prosecutor and Defender Offices, by Size of Agency

Effect of Workload	Size of Agency—Number of Employees				
	1–4	5–9	10–24	25–74	75+
	(Percent of All Replies)				
Prosecutor Offices:					
No change	68	64	75	51	72
Decrease	12	20	18	31	20
Increase	20	16	7	17	8
Total	100	100	100	100	100
Number of reports	(210)	(106)	(64)	(40)	(40)
Defender Offices:					
No change	61	83	76	65	
Decrease	31	10	21	31	
Increase	8	7	3	3	
Total	100	100	100	100	
Number of reports	(49)	(29)	(33)	(23)	

Source: NMS Executive Surveys, 1975.

that these programs had not affected their workloads. However, where changes in workloads were attributed to these programs, a very large proportion of all defenders, and about two-thirds of all prosecutors in agencies with 10 or more employees, reported that the effect was a reduction in workloads (Table III–13).

Despite the relatively widespread reported use of some form of pre-trial diversion, the actual number of cases reported as disposed of by such programs appears to be quite small, according to data submitted by prosecution offices to the NMS. These reports indicated that only 3.5 percent of all felony and misdemeanor cases handled by these offices in fiscal year 1975 had been disposed of through formal pre-trial diversion, with deferred prosecution. It is likely, however, that this figure considerably understates the total volume of such actions, in view of the fact that in most jurisdictions such programs are handled administratively, without formal statutory authority. However, even with allowance for some considerable understatement of the true extent of such practices, it appears likely that their net effect in reducing workloads and staffing needs of judicial process agencies has been relatively small to date.

3. *Plea bargaining.* Plea bargaining is an informal method of case disposition whereby the prosecutor and defense counsel meet to agree on the particular method of case disposition. The defendant may plead guilty in exchange for reduced charges or with the

informal understanding that the sentence imposed by the judge will not be as severe as would be the case upon conviction after trial. Abolition of the practice has been recommended by the National Advisory Commission on Standards and Goals on the grounds that this would " . . . increase the fairness and rationality of the processing of criminal defendants,"[5] and would reduce the incentive to overcharge or improperly charge for plea bargaining.

Among prosecutors who responded to the NMS survey, about half reported that 60 percent or more of their cases were resolved by plea bargaining. Among defender agencies the reported plea bargaining share was higher—the typical defender agency resolved at least two-thirds of its cases through plea bargaining. Considerable variation in the extent of plea bargaining was reported by both types of agencies. At one extreme, 17 percent of the prosecutors reported that 20 percent or fewer of their felony cases were bargained, while at the other extreme 20 percent reported that more than 80 percent of cases were plea bargained (see Table III–14).

The NMS survey results also indicate that prosecutors, as a group, strongly support continuation of plea bargaining. Almost 88 percent of prosecutors believe that plea/sentence negotiations should be retained. Over three-fourths of prosecutors surveyed also expect no change in their plea bargaining practices. However, among the larger prosecutor offices—those with 25 or more employees—the expected trend among those expecting a change is towards decreased use of plea bargaining (see Table III–15). The outlook, based on the responses from agency executives, is for some gradual increase in the documentation of plea bargaining, probably contingent upon the adequacy of prosecutor staffs, in relation to case loads.

TABLE III–14

Percentage Distribution of Prosecutors and Public Defenders by Proportion of Cases Processed Through Plea Bargaining

Plea Bargaining Rate	Prosecutors	Defenders
0–20%	17	11
21–40	14	10
41–60	23	19
61–80	26	23
81–100	20	36
Total	100	100

Source: NMS Executive Survey, 1975.

TABLE III–15

Percentage Distribution of Prosecutors, by Expected Change in Plea Bargaining in Next Two Years, by Agency Size

	Total	Size of Agency—Number of Employees				
		1–4	5–9	10–24	25–74	75+
No change	78	83	71	74	57	63
Increased use	10	10	11	12	20	—
Decreased use	12	7	17	14	23	37
Total	100	100	100	100	100	100

Source: NMS Executive Survey, 1975.

The manpower effects of curtailing plea bargaining are by no means certain. One writer summarizes a widely held view of the dire consequences that would follow the abolition of plea bargaining.

> Prohibition of plea bargaining might lead to a substantial increase in the number of trials required for the disposition of criminal actions. Although some judges would continue to impose more lenient sentences on guilty-pleading defendants than on those found guilty after trial, the absence of plea bargaining should cause a decrease in the number of guilty pleas since plea bargaining plus judicial leniency probably results in more pleas than leniency alone. An increase in criminal trials would severely tax an already overburdened system. More trials would require more state and federal employees—judicial, prosecutorial and administrative. Additional courtroom facilities and prosecution offices would be essential, and administrative costs would grow proportionately larger.[6]

Available data suggest a few generalizations, some of which support this bleak prophecy and others which contradict it.

- The impact of current plea bargaining practices will vary markedly, depending on size of caseload (as measured by the number of filings) of the jurisdiction in which the charge takes place. A study of the elimination of plea bargaining in Black Hawk County, Iowa found no adverse effects,[7] whereas an analysis of its implications in New York City predicted an even more serious clogging of the courts, if plea bargaining were significantly reduced.[8]
- Many plea bargain defendants would be acquitted or dismissed were they to contest their cases. After analyzing statistical data from Federal courts Finkelstein concludes:

> . . . the inducement of guilty pleas is not merely a way of shortening the criminal process. Instead, pressures to plead guilty have been used to secure convictions that would not otherwise be obtained.[9]

- Those who plea bargain and are sent to prison do serve less time than those who do not plea bargain and are convicted of similar offenses, but "there are indicators that the parole process tends to neutralize the sentence differential associated with charge reductions."[10] The plea bargained status of offenders is recognized and this impacts on the granting of parole.

The above citations simply suggest that further carefully designed research on the systems-wide impact of changes in plea bargaining practices is needed, possibly using the offender-based statistical records being developed in various states. Our tentative conclusion, however, is that—even with some alleviation in the personnel shortages currently reported by prosecutors, defenders, and the courts—any trend towards reduced plea bargaining (or to regulate it) will be quite gradual and will have a limited impact upon overall criminal justice manpower needs.

4. *Court unification.* All major assessments of the court system have highlighted the need for unification and consolidation of the multi-tiered, decentralized organizational structure of the courts, still prevailing in most states. Emphasis has been placed, particularly, on the need to reform and upgrade the lower court structure, as a necessary step towards increased efficiency and equity in the adjudicative process. The National Advisory Commission thus recommended that state courts should be organized into a unified system financed by the state, that all trial courts should be unified into a single trial court of general jurisdiction and that criminal jurisdiction now in courts of limited jurisdiction should be placed on these unified courts, with the exception of certain traffic violations.[11]

Even though over 20 states have restructured their courts in the past 10 years, problems of overlapping and concurrent jurisdictions still exist.

> In many areas of the country today, a potential litigant discovers that he can choose between the original jurisdiction of either a state court, a county court, or one of several municipal based courts.[12]

In his recent review of lower-court unification Gazell comments:

> The consolidation of state tribunals with limited or special original jurisdiction is almost universally regarded, not only as an instrument of court regeneration, but also the path to judicial grace—court systems that are competent, effective, uniform and equitable.[13]

He identifies two major components of unification: managerial supervision and court consolidation.

Managerial supervision includes:

- Laws that authorize the highest court in the state to make all rules regarding practice and procedure with or without the retention of a legislative veto power.
- The right to appoint managerial personnel for the rest of the court system, especially the chief judges and judicial administrators at the appellate and third court levels. The personnel are appointed by some at the pleasure of the chief justice, the supreme court, or the administrative director.
- The right of the highest court or its agents to assign all court personnel at will.
- The preparation by the highest court (or its administrator) of a yearly budget for the state judiciary.[14]

At a minimum, unification of courts has meant a consolidation of functions in a structure that is more organized and more manageable as a unit than were the separate component pieces. But it is important ot stress that court consolidation has taken a variety of forms, which Gazell classifies as five patterns. These range from consolidation of all courts in selected counties or cities, to establishment of a single statewide trial court of general jurisdiction and abolition of all lower courts. As measured by the number of tiers, data show that between the years 1936 and 1970, 17 states partially unified their lower courts while retaining two or more tiers with fewer tribunals; three states consolidated lower courts into a single level, and one state abolished its lower courts.[15] Since 1970, four states have altered lower courts without unifying them, four more states have reduced lower courts to two tiers, two states have moved toward one tier systems, and three states have at least temporarily abolished lower courts in their jurisdictions.

Clearly, lower court-unification is a change that is taking place by degrees. Accordingly, Gazell measured the degree of court unification by devising a scale consisting of seven variables each of which may assume a value of 0 to 4. The first four variables

are those described above under the heading of court management. The remaining three variables include the presence of intermediate appellate courts, the kinds of general trial courts and the kinds of lower courts. Each of the 50 states is assigned a score on each variable and, in turn, these scores are summed, to provide a total unification score that ranges from 2 (Mississippi) to 25 (North Carolina). The maximum score is 28 (7 × 4), the minimum 0.

An obvious question is the effect of lower-court unification upon employment trends. We would expect that those states that extensively modified their court system experienced less growth in judicial employment than those that did not. This is not an unreasonable expectation since lower court unification frequently involves elimination of the positions of some judicial personnel. Indeed, one of the major stumbling blocks to any trial court unification effort has been the difficulty of consolidating the work of limited jurisdiction courts. The reasons for this are political: unification almost always results in the elimination of many quasi-judicial positions—usually justices of the peace—and causes local jurisdictions to lose not only some control, but also revenue from agencies that were formerly considered "their" courts.

There does appear to be a relationship between the degree of unification and the change in employment between 1971 and 1974 (Table III–16). States coded by Gazell as having a high degree of unification report a much slower growth in judicial employment in the 1971–74 period than states that have not made much progress towards unification. The disparity in employment growth is most evident at the state level where there is a four-fold difference between states included in the "high" category and those in the "low" category.

Caution must be exercised in interpreting these data because, obviously, alternative explanations are possible for these relationships. It must be kept in mind that the changes included in this classification scheme are not necessarily recent innovations in any one state. Unification as a process began in 1936, and continues up to the present time. Also, a simple classification scheme cannot take into account economic and demographic changes, increased or decreased criminal and civil caseloads, all of which might contribute to the differential growth in court employment.

Although some courts are organized on a horizontal basis, the majority of courts that have reorganized, or are in the process of reform, typically select a vertical framework. In most states visited by NMS staff, this organizational model usually delegates administrative responsibility to the state's highest court and, consequently, to its presiding justice or judicial council. One of the advantages claimed for this model is the establishment of uniform practices and policies, not only for the channeling of cases through the system, but for supervision of judicial and nonjudicial personnel. There is a need for professional skills to manage a system with a centralized administration. Although supreme courts, chief judges, and judicial counsels have expertise to interpret the law they are not system managers. Thus, while accomplishing overall economies in judicial manpower, court unification over the past 10 years probably has stimulated the increased employment of professional court administrators in both state and local court systems, as well as of supporting technical and administrative staffs.

TABLE III–16

Percentage Change in Full-Time Equivalent Judicial Employment by Degree of Lower-Court Unification and Level of Government: 1971–1974 [b]

Degree of Unification [a]	Level of Government [c]		
	Total	State	Local
Low:			
0–10 (7 states)	26	40	24
11–14 (14 states)	22	36	19
15–18 (16 states)	20	26	18
High:			
19–28 (13 states)	15	10	17

[a] Source: James A. Gazell, "Lower-Court Unification in the United States," p. 660.

[b] Source: U.S. Department of Justice and U.S. Department of Commerce, *Expenditure and Employment Data for the Criminal Justice System*, 1971 and 1974.

[c] Percentage changes are weighted averages.

E. Conclusions

Judicial process agencies have, collectively, experienced more rapid recent employment growth than any other major category of criminal justice agency. Despite a projected slowdown in the overall rate of increase in criminal justice expenditures and employment, employment in these agencies is expected to grow at a relatively rapid rate to 1985.

These trends result, in part, from increasing pressures upon the court to cope more speedily, and effectively, with their large backlogs of both criminal and civil cases, and—in part—from the increasing demands being placed upon the courts as the arbiter of the nation's laws and conscience.

Based on the NMS projections, employment growth rates are expected to vary significantly for

the various categories of judicial process agencies and occupations. Indigent defense and prosecution agencies are expected to grow more rapidly than courts. Employment growth in the courts is expected to be more rapid for courts of general jurisdiction and appellate courts, than for the lower courts, as a result of the trend towards court unification and of reduced arrests for certain categories of victimless offenses. Employment growth in prosecution and defender agencies is similarly expected to be more rapid at the state level.

Among the major judicial process occupations, relatively rapid growth in employment is projected for assistant prosecutors and defenders, and for various judicial support occupations, as contrasted to substantially slower growth in the number of judges.

These more detailed projections are based in large part on an assumed continuation of trends in the recent past, i.e., the period 1971–74. The uncertainties in these projections—due in part to the very limited data base—have been emphasized.

However, if these projected trends are realized, they do offer the prospect of significant amelioration of some of the acute problems impacting upon the adjudicative system at present. Aggregate employment in judicial process agencies is projected to increase by 62 percent between 1974 and 1985, as contrasted to a net growth of only 12 percent in the projected number of arrests for Part I offenses, which generate a large component of the workloads of trial courts and of prosecution and defense agencies. These increased staff resources, if adequately trained and effectively utilized, could contribute materially to reducing case delay and to enhancing the overall level of performance of the courts system in the coming decade.

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CHAPTER IV. RECRUITMENT AND RETENTION OF STAFF ATTORNEYS IN PROSECUTION AND INDIGENT DEFENSE AGENCIES

A. Introduction

Employment as an assistant prosecutor—and more recently—as an assistant public defender has been one of the typical threshold jobs for young attorneys, following law school graduation. It has enabled them to obtain the needed practical legal experience not provided in law school curricula while earning a moderate salary. Moreover, as noted in Chapter II, many such positions are available on a part-time basis, hence, are particularly attractive to younger, as well as some more mature attorneys, while in the process of establishing their own practices.

The need to improve the attractiveness of both prosecution and defender positions, and to increase the average tenure or experience level of attorneys in these offices (as well as to reduce reliance on part-time personnel), was recognized in the reports of both the President's Crime Commission and of the National Advisory Commission on Standards and Goals. The former report noted that—under prevailing practices—most newly hired assistant prosecutors were compelled to "learn by doing." Although some larger offices provided for a routine progression of assignments, others often assigned important responsibilities to inexperienced assistants with inevitable adverse effects upon quality of performance.[1] Neither of these reports considered it realistic to press for compensation levels in these public agencies which would be fully competitive with alternative salary opportunities in private legal practice, over a lifetime legal career. The NAC report did, however, recommend that salaries of assistant prosecutors and defenders in the first five years of service should be comparable to those in private practice and observed that "retention of assistant prosecutors (and defenders) for at least five years would represent a substantial increase in the average length of service."[2]

This chapter reviews NMS findings on recent personnel turnover and tenure among assistant prosecutors and defenders, on factors contributing to the relatively high turnover in these positions and on the implications of these patterns for future prosecutor and defender recruitment needs.

B. Recent Recruitment and Turnover Experience

Since the National Manpower Survey was conducted in late 1975, during a period of high unemployment and of substantial reported surpluses of recent law school graduates in relation to legal job openings, it was assumed that problems of recruitment and retention of attorneys in prosecutor and defender positions would be relatively slight, as compared to those which had existed or might be expected under more favorable labor market conditions. The survey results generally confirmed this judgment. Only 1 percent of chief prosecutors, and 3 percent of heads of indigent defense offices, cited personnel turnover as their "most serious" manpower problem, and 2 percent or less of each category indicated that a lack of qualified applicants was a major factor contributing to their "most serious" manpower problem. About 24 percent of the prosecutors, and 8 percent of the defenders did, however, report that inadequate compensation was the major factor contributing to personnel problems in their agencies (Table II–13 and II–16).

Field interviews conducted by NMS staff in 10 states in late 1975 further confirmed that neither recruitment nor retention of attorneys was a significant problem at that time: "Where agencies are able to hire, the most frequent reason given for ease of recruitment, is that there are simply more qualified applicants than vacancies. Fewer attorneys are leaving, so there are fewer vacancies. Young lawyers want to have trial experience and the prosecutors' offices and the public defenders' offices are the best way to get it."[3] In addition, the NMS field survey report noted some recent improvement in relative salaries for assistant prosecutors and defenders, as compared with those in private practice, among the agencies visited.

In anticipation of these conditions, the NMS questionnaires to prosecutors and defenders requested data on actual recruitment and resignations of attorneys in their staff for fiscal year 1974—prior to the recent economic recession—and also included questions concerning recruitment and turnover problems during the period 1971–74.

As shown in Table IV–1, voluntary resignation rates of both assistant prosecutors and defenders averaged 22 percent in fiscal year 1974. Personnel separation rates tended to vary inversely with agency size, with the highest rates reported among agencies with less than 10 employees. This pattern is consistent with that found for other categories of law enforcement and criminal justice agencies and is probably associated with the larger proportion of part-time positions in smaller agencies, their lower average salary rates and more limited advancement opportunities, as discussed elsewhere in this report. New hiring rates were substantially higher than the resignation rates—about 32 percent for prosecutors and 33 percent in defenders' agencies—as a result mainly of the relatively high rates of employment growth in these agencies during FY 1974. Hiring rates, as a percentage of total end-year employment, were also highest among the smaller agencies.

Although the reported personnel turnover rates among assistant prosecutors and assistant defenders corresponded very closely in FY 1974, responses by agency heads to questions concerning their recruitment and retention problems during 1971–74 indicated that chief prosecutors generally had been much more concerned about these problems than heads of defender offices. Thus 35.6 percent of the chief prosecutors reported that there had been a shortage of qualified applicants for assistant prosecutor positions in their agencies during this period, as compared with only 13.6 percent of the heads of public indigent defense offices. Much lower proportions of these executives—18.2 percent of the prosecutors and 6.8 percent of the defenders—reported that personnel turnover among their attorney staff had been a serious or critical problem during this period. These differentials may be due in part to the fact that indigent defense agencies are mainly concentrated in the larger cities, which generally have a more adequate supply of attorneys, whereas prosecutors' offices and employment are more widely distributed in both metropolitan areas and in smaller communities throughout the country.

In order to assess the need for initial training of newly hired staff attorneys, respondents were asked to estimate the proportion of attorneys recruited during the two previous years (i.e., 1974–75) who had previous trial experience. These percentages, by size of agency, are shown in Table IV–2. In the case of prosecutor agencies, a weighted distribution, based on estimated total accessions in each agency size group, suggests that—on the average—only about one-fifth of all recently hired staff attorneys had prior trial experience. A similar estimate for defender accessions indicates that nearly one-third

TABLE IV–1

Hiring and Voluntary Resignation Rates for Assistant Prosecutors and Defenders, Fiscal Year 1974[a]

Number of Employees	New Hire Rate		Voluntary Resignation Rate	
	Prosecutors	Defenders	Prosecutors	Defenders
Average[b]	30.9	33.4	22.1	22.3
75 or more	25.5	26.7	18.7	17.4
25–74	21.8		14.5	
10–24	37.4	34.6	28.5	23.3
5–9	37.0	53.0	30.3	36.3
1–4	48.0		27.5	

[a] Source: NMS Executive Surveys, 1975. Rates computed on basis of employment as of June 30, 1974.
[b] Based on weighted medians.

TABLE IV–2

Percent of Assistant Prosecutors and Defenders Hired in 1974–75 With Previous Trial Experience, by Size of Agency[a]

(Percent distribution)

Percent with Previous Trial Experience	Total[b]	Agency Size (Number of Employees)				
		1–5	5–9	10–25	25–74	75 or more
Prosecutors:						
0	29.4	50.0	38.5	24.4	18.5	15.5
1–25	30.5	1.7	9.1	16.8	46.3	60.0
26–50	17.1	10.6	23.6	23.5	14.8	17.8
51–75	5.3	1.7	3.8	15.1	7.4	4.4
76 or more	17.7	36.0	25.0	20.2	13.0	2.2
Total	100.0	100.0	100.0	100.0	100.0	100.0
Defenders:						
0	18.0	26.3	25.0	19.4	13.3	
1–25	25.1	2.6	4.2	25.0	38.3	
26–50	25.1	18.4	22.9	22.2	28.3	
51–75	8.8	7.9	6.3	8.3	10.0	
76 or more	23.1	44.7	41.7	25.0	10.0	
Total	100.0	100.0	100.0	100.0	100.0	

[a] Source: NMS Executive Surveys, 1975. Excludes agencies with no assistant prosecutors or defenders.
[b] Weighted averages based on estimated number hired, by agency size group, in FY 1974.

had prior trial experience. In both agency categories, recruitment of attorneys with prior trial experience was concentrated in the smaller agencies, those with fewer than 10 employees, and is probably due to the substantial reliance upon part-time attorneys in these agencies. The latter typically combine employment in a prosecutor or defender office with their own private practice, hence, are more likely to be experienced attorneys. In contrast, among larger agencies—which mainly recruit full-time attorneys—only small proportions reported that more than one-half of recent accessions had prior trial experience.

Another indicator of the experience level of attorneys in prosecutors' and defenders' offices is provided by a comparison of their age distributions with those of all lawyers in the civilian labor force (Table IV–3). About 60 percent of all staff attorneys in prosecutors and defenders' offices, exclusive of chief prosecutors or defenders, were in the age group 25–34 years, and over 30 percent had not yet attained age 30. These proportions are more than twice as great as for all lawyers in 1970. Conversely, only about 20 percent of the prosecutor attorneys, and 11 percent of the defenders, were 45 years or older, whereas 44 percent of all attorneys were in this age range in 1970.

Finally, data were also compiled from the 1974 Census survey of criminal justice personnel, on the number of years of service of attorneys with their current agency. Over 60 percent of assistant prosecutors and assistant defenders reported less than four years of service, while only 23 percent of the assistant prosecutors and 16 percent of the assistant defenders had six or more years of service with their current agencies (Table IV–4).

TABLE IV–3

Age Distributions of Staff Attorneys in Prosecutor and Defender Offices in 1974, Compared with Age Distribution of All Lawyers in the Labor Force

(Percent distribution)

Age Group	Prosecutors 1974	Defenders 1974	All Lawyers 1970
Less than 25 years	1.3	—	2.2
25–34	59.7	59.9	27.6
(25–29)	(29.3)	(32.2)	(13.9)
(30–34)	(29.4)	(27.7)	(13.7)
35–44	10.4	11.2	25.9
45–54	12.4	7.1	19.3
55–64	6.4	3.5	15.9
65 years and over	1.7	0.7	9.1
Total	100.0	100.0	100.0

Sources: Data on prosecutors and defenders from U.S. Bureau of the Census, Employee Characteristics Survey, 1974. Data on all lawyers from U.S. Census of Population, *Occupational Characteristics*, PC(2)-7A, Table 3.

TABLE IV–4

Years of Service with Agency of Assistant Prosecutors and Defenders, 1974

(Percent distribution)

	Assistant Prosecutors	Assistant Defenders
Less than 2	40.2	32.4
2–3	22.7	30.0
4–5	14.1	22.0
6–10	12.6	15.6
11–15	5.1	—
16–20	2.2	—
21 and over	3.0	—
Total	100.0	100.0

Source: Census Employee Characteristics Survey, 1974.
Note: Percentages may not add to 100 due to rounding.

The above comparison has been limited to staff attorneys, exclusive of chief prosecutors or defenders. However, the comparative data available indicate that the latter, too, are younger and less experienced on the average than their counterparts in private practice. Thus, whereas the median age of all lawyers in the labor force in 1970 was about 43 years, the median age of chief prosecutors and defenders responding to the NMS survey was only 37 years. Moreover, over one-half of all chief prosecutors and nearly all chief defenders had less than six years of service with their agencies, according to the Census Employee Characteristics Survey. The relatively limited experience of prosecutors is due in part to the fact that a large proportion of all prosecutors are elected, typically for four-year terms, or else hold office by reason of political appointment. Among prosecutors responding to the NMS, 72 percent were originally selected by election and 27 percent by appointment. Public defenders generally were appointed to their position by state or local officials or by the judiciary. In either case, virtually none of these positions have civil service status or similar tenure protection, thus contributing to both voluntary and involuntary turnover among these key personnel.

C. Factors Contributing to High Personnel Turnover

Employees normally leave their jobs because of some combination of reasons. These may be broadly grouped as "extrinsic" factors, such as pay and

promotional opportunities, and as "intrinsic" factors, such as those characteristics of the work itself which affect employee job satisfaction. In the absence of direct attitudinal surveys of staff attorneys themselves, chief prosecutors and defenders were queried in the NMS surveys on factors which, in their judgment, were most important in causing attorneys to leave positions in prosecutor and defender offices. Five possible reasons were identified, including inadequate salaries, limited promotional opportunities, excessive workloads, frustration and low status of job, and desire for broader legal experience. In addition, respondents were given an opportunity to enter other possible explanations.

As would be expected, "inadequate salaries" were most frequently cited by both prosecutors and defenders, as the primary reason for separation. However, while 65 percent of the prosecutors selected this factor, only 36 percent of the heads of defenders' offices offered this as the "most important reason." Another extrinsic factor directly related to compensation, i.e., "limited promotion opportunities," was identified by less than 5 percent of the prosecutors and less than 4 percent of the defenders, as the primary reason for high staff turnover. In contrast, such intrinsic job factors as excessive workloads and job frustration, were identified as most important (in combination) by 36 percent of the defenders, but only 16 percent of the prosecutors. The desire for broader legal experience by staff attorneys, which may be related to interest both in career advancement and in a broader scope of professional assignments, was identified as "most important" by 19 percent of the defenders and 11 percent of the prosecutors.

Thus, while pay and pay-related considerations were identified as the most important factor in staff turnover, it is clear that defenders, as a group, place much greater emphasis on the role of other job factors, such as excessive workloads and related job frustrations, than do prosecutors. The greater emphasis placed upon pay-related issues by the prosecutors is also consistent with their responses to an earlier question concerning the most important factor contributing to personnel problems in their agencies. Nearly one-fourth (24 percent) of the prosecutors identified inadequate pay as the "major contributing factor" as compared with only 8 percent of the defenders.

The extent of the disparity between earnings of attorneys employed in prosecutor or in public defender offices, and of other lawyers, is indicated by data from the 1970 Census of Population, as well as by more recent data from the NMS surveys. Based on the 1970 Census, the median earnings of all male lawyers employed for 50 or more weeks, was $19,740 in 1969. In the same year, the median earnings of male lawyers employed for 50–52 weeks in state and local governments, were reported at $14,208 for state employees, and at $12,671 for local employees.[4] The latter categories include attorneys employed in prosecution or defender activities and in other functions of state and local governments. However, there is no reason to believe that those employed in prosecution or defender activities received more than these average salaries.

More specific data on minimum salaries of assistant prosecutors and defenders were compiled from the NMS surveys of prosecutors and defenders conducted in late 1975. These minimum or entering salaries averaged $12,403 for assistant prosecutors, and $13,761 for assistant defenders, based on medians weighted by employment in agency size groups (Table IV–5). Small agencies, i.e., with fewer than five employees, generally offered lower salaries than did larger agencies, particularly in the case of the prosecutor offices surveyed. These salary levels can be compared with an average entry-level salary of $15,000 for attorneys in private employment, as of March 1975, based on the Bureau of Labor Statistics national survey of pay in key professional and other occupations.[5]

The higher median entering salaries for attorneys in public defender offices than for attorneys in prosecutor offices, as shown in Table IV–6, must be interpreted with some caution, in view of the fact that defenders' agencies are more highly concentrated in larger metropolitan areas (where pay rates generally tend to be higher) and many states and local governments (such as New York City) rely

TABLE IV–5

Executive Responses on Most Important Factor Contributing to Voluntary Resignations of Prosecutor and Defender Attorneys

(Percent distributions)

Most Important Factor	Prosecutors	Defenders
Salaries inadequate	65.3	35.6
Excessive workload	11.8	26.7
Desire for broader legal experience	11.2	19.1
Frustration, low status, etc.	4.4	9.8
Limited promotion opportunities	2.7	5.3
Total	**100.0**	**100.0**
Number of responses	(1205)	(225)

Source: NMS Executive Surveys, 1975.

TABLE IV–6

Minimum Salaries for Assistant Prosecutors and Defenders, by Size of Agency, 1975[a]

Agency Size (Number of Employees)	Median Minimum Annual Salary	
	Assistant Prosecutors	Assistant Defenders
All Agencies[b]	$12,403	$13,761
1–4	8,679	12,848
5–9	11,088	14,171
10–24	12,499	13,667
25–74	13,600	13,821
75–149	13,269	
150 or more	13,500	
Number of responses	562	138

[a] NMS Executive Surveys, 1975
[b] Weighted median.

primarily upon contractual arrangements for provision of indigent defense services. The latter were not included in the scope of the NMS survey. A survey of both categories of defender agencies conducted by the National Legal Aid and Defenders Association (NLADA) in late 1972, found that 76.5 percent of full-time chief defenders actually received less compensation than the chief prosecutor in their jurisdiction.[6]

In any event, the above comparisons confirm the continued existence of substantial gaps between earning opportunities for attorneys in state and local criminal justice agencies and those in other alternatives. Although direct comparisons are not available, it is probable that this adverse differential becomes progressively wider in the case of attorneys with substantial periods of experience, thus creating strong incentives—under normal conditions—for attorneys to leave positions in prosecutors and defenders offices after relatively short periods of service.

D. Projected Recruitment Needs

Recruitment needs for attorneys in prosecution and in public indigent defense offices will be determined both by trends in future personnel turnover, i.e., "replacement needs," and by trends in total requirements for such personnel, i.e., "growth needs." Despite the relatively rapid recent growth in employment of prosecution and indigent defense personnel, over two-thirds of total recruitment of new staff attorneys in fiscal year 1974 was to replace losses due to personnel turnover. As shown in Table IV–7, about 5,900—or 70 percent—of the combined total of nearly 8,400 new hires for these positions in

TABLE IV–7

Estimated Annual Recruitment Needs for Staff Attorneys in Prosecution and Legal Services Offices, and in Public Indigent Defense Agencies: Actual, Fiscal Year 1974; Projected, 1975–80, 1980–85

	Actual FY 1974	Projected (Annual Average)	
		1975–80	1980–85
Prosecution and Legal Services Office:			
Average annual employment	21,980	28,090	38,190
Separation rate, total	**23.1**	**19.4**	**21.0**
Voluntary resignations	22.1	18.4	20.0
Other causes	1.0	1.0	1.0
Total recruitment needs	**7,180**	**7,700**	**9,650**
Employment growth	2,100	2,250	1,630
Replacements	5,080	4,450	8,020
Indigent Defense Offices:			
Average annual employment	3,500	4,130	5,410
Separation rate, total	**23.0**	**19.5**	**21.0**
Voluntary resignations	22.3	18.7	20.3
Other causes	.7	.7	.7
Total recruitment needs	**1,200**	**1,020**	**1,420**
Employment growth	390	220	260
Replacements	810	800	1,160

Sources: 1974 Data—Employment estimates based on total number of staff attorneys in prosecution and public indigent defense offices, both full-time and part-time. (See Chapter II).

Voluntary resignation rates from NMS Executive Survey, 1975. Attrition rates for other causes, i.e., deaths and retirement, derived from estimates of labor force attrition by age group, for men, from BLS, *Length of Working Life for Men and Women*, BLS Bulletin 187.

1975–85—NMS projections. See text.

fiscal year 1974 were for replacement purposes, and the remainder, about 2,500, resulted from new positions.

The principal cause of personnel attrition among assistant prosecutors or defenders is due to voluntary resignations. In view of the relatively young age of most incumbents of these positions, separations due to such causes as death and retirement are estimated at only about 1.0 percent per year for assistant prosecutors, and 0.7 percent for assistant defenders, as compared with voluntary resignation rates of about 22 percent in fiscal year 1974 for these personnel. Future rates of voluntary resignation can be expected to vary with fluctuations in general labor market conditions for members of the legal profession. As in other occupations, attorneys in prosecutor or defender offices are more likely to quit their jobs if alternative employment and earnings are favorable. This will depend both on trends in overall demand for legally-trained personnel, and on the supply of new lawyers—which, in turn, is influenced by the number of law school graduations.

The number of new law school graduates has increased at a particularly rapid rate in recent years, from 17,421 in 1970–71, to 29,961 in 1974.[7] Employment of lawyers has also grown rapidly over this period, from 293,000 in 1971 to 374,000 in 1975, or at an average of about 20,000 per year.[8] However, employment growth had failed to keep pace with the large influx of recent graduates seeking entry into the legal profession, resulting in concern regarding a large potential surplus of lawyers. Some evidence of a moderate weakening in the labor market for attorneys as compared with other categories of professional and administrative personnel is provided by the following comparison of annual salary trends for the period 1970–76, based on Bureau of Labor Statistics national pay surveys of selected white collar occupations:

TABLE IV–8

Average Annual Percent Increases in Salaries, 1971–76

Year	Attorneys	All Professional, Administrative and Technical Occupations Surveyed
1971–72	6.1	5.5
1972–73	6.3	5.4
1973–74	5.8	6.3
1974–75	7.6	8.3
1975–76	6.1	6.7

Source: U.S. Bureau of Labor Statistics, *National Survey of Professional, Administrative, Technical, and Clerical Pay*, March 1976, BLS Bulletin 1931.

Between 1971 and 1973, average salary increases of attorneys exceeded the average for other key professional, administrative, and technical occupations, indicating a continued favorable job market for attorneys in these years. Between 1973 and 1976, however, the rate of salary increase for attorneys was about 10 percent lower than for all of the professional-administrative-technical occupations surveyed.

More recent assessments, however, suggest that earlier expectations of a large prospective surplus of lawyers may have been overstated. Thus, BLS projections of the number of annual new positions for lawyers, between 1974 and 1975, were progressively increased from a forecast of 16,500 per year in 1973, to 26,400 per year in 1976.[9] The rate of growth of law school enrollments and graduations has also slowed down appreciably in the past two years, and—as a result—the most recent projections anticipate an average of 31,700 law school graduates per year between 1974 and 1985, only moderately higher than the total of nearly 30,000 for 1974–75.

Based on these assessments, the NMS projections assume a moderate reduction in attrition rates of assistant prosecutors and defenders, due to voluntary resignations, during the period 1974–80, and an increase of these rates in the period 1980–85, in line with our assumption of an overall improvement in the labor market in the latter period. These continued high turnover rates, in combination with projected growth in total employment, would in turn result in a substantial increase in annual recruitment requirements for staff attorneys in prosecution and defender agencies, from an estimated total of 8,100 in FY 1974, to annual averages of 8,700 between 1974 and 1980, and 11,100 between 1980 and 1985.

These projections assume no significant change in relative salaries of attorneys employed in state and local agencies, as compared with earnings opportunities for attorneys in either private practice or in other salaried positions. A reduction or elimination of the existing adverse salary differentials, in combination with other measures to increase the attractiveness of careers in prosecution or indigent defense agencies, would have the effect of increasing the stability and experience level of personnel in these key occupations, and substantially reducing future recruitment needs.

NOTES AND REFERENCES

1. The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, 1967, p. 74.
2. National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, pp. 233, 275.
3. NMS Final Report, Volume VIII, p. 845.
4. Estimated median earnings of all male lawyers employed 50–52 weeks in 1969, were adapted from 1970 Census of Population, *Occupational Characteristics*, PC(2)–7A, Tables 15 and 16. Median earnings of male lawyers employed in state and local governments in 1969 from 1970 Census of Population, *Government Workers*, PC(2)–7D, Table 13.
5. U.S. Bureau of Labor Statistics, *National Survey of Professional, Administrative, Technical, and Clerical Pay*, March 1976, Bulletin 1931.
6. NLADA, Hearing, P. 19.
7. Number of law school graduates for 1970–71 from U.S. Department of Health, Education, and Welfare, National Center for Educational Statistics, *Earned Degrees Conferred by Institutions for Higher Education*, 1961–62 through 1971–72. Law school graduates in 1974–75 from American Bar Association, cited in *New York Times*, Nov. 28, 1976, p. 55.
8. U.S. Bureau of Labor Statistics, *Occupational Projections and Training Data*, BLS Bulletin 1918, 1976, p. 32. See also, *New York Times*, Nov. 28, 1976, p. 55, "New Lawyers Find Job Projects Rise Despite Predictions."
9. Annual averages based on unpublished estimates from the *Current Population Survey of the U.S. Bureau of the Census*.

CHAPTER V. LEGAL EDUCATION AND TRAINING

A. Introduction

The normal basic requirements for professional qualification as a judge, prosecutor or defender consists of completion of an undergraduate law school program, followed by admission into the bar. Since law school courses have been mainly designed to provide only a broad, general knowledge of the substantive principles of law to develop the needed analytical legal skills, this initial academic preparation must normally be supplemented by periods of practical on-the-job experience and training. In the criminal justice field, there has been increasing recognition of the need for formal training and continuing legal education programs, to provide both the specialized knowledge, and the practical negotiation and trial skills required for adequate performance.

1. *Early programs.* Before the advent of the Law Enforcement Assistance Administration little specialized training was available for judges, prosecutors or defenders, other than that provided in a few national programs. One of the first of these programs, the Appellate Judges Seminars sponsored by the Institute for Judicial Administration, was initiated in 1956. In the early 1960s the National Colleges for State Trial Judges and Juvenile Justice opened their doors. But for the great majority of the judiciary, particularly those judges serving in courts of limited jurisdiction, no national training programs were available.

National programs for attorneys were even more limited. One of the few such national efforts was that of the Joint Committee of the ALI–ABA on Continuing Legal Education, which published a series of 10 monographs on criminal justice practice and offered *ad hoc* criminal law courses as part of its national continuing legal education program for all fields of law. An additional national effort, the Northwestern University Law School Short Courses for Prosecutors and Defenders, was limited to a small number of participants.

At the state level, continuing education programs for judges and attorneys were equally scarce. Some areas of the country, particularly the Northeast—where the Practicing Law Institute offered courses to attorneys—had some continuing legal education activity, but nowhere could it be said to be more than minimally satisfactory. Agency-level training for prosecutors and defenders appears to have been limited to the largest agencies (e.g., Los Angeles, Chicago, New York).

2. *Commission recommendations.* Since the publication of the Wickersham Commission reports in 1931, there has been growing national recognition of the need to improve the competencies of judicial process personnel for effective and equitable administration of justice.[1] This was reaffirmed by the President's Commission on Law Enforcement and Administration of Justice in 1967.[2] Similarly, the American Bar Association Project on Criminal Justice Standards called for in-house training of prosecutors, supplementing earlier ABA standards which advocated defense training.[3] The most recent and fullest expression of national concern for adequate training was that of the National Advisory Commission on Criminal Justice Standards and Goals (NAC):

> Every State should maintain a comprehensive program of continuing judicial education. Each State program should have the following features:
>
> (1) All new trial judges, within three years of assuming judicial office, should attend both local and national orientation programs as well as one of the national judicial education programs. . . .
>
> (2) Each State should develop its own State judicial college . . . (Standard 7.5)
>
> All newly appointed or elected prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs for new assistant prosecutors should be available in all metropolitan prosecutor offices. All prosecutors and assistants should attend a formal prosecutors' training course each year, in addition to the regular in-house training. (Standard 12.5)
>
> An intensive entry-level training program should be established at State and national levels to assure that all attorneys, prior to representing the indigent accused have the basic defense skill necessary to provide effective representation.

> A defense training program should be established at the national level to conduct intensive training programs . . . to new (defense attorneys) . . .
>
> Each State should establish its own defense training program to instruct new defenders. . . .
>
> Every defender office should establish its own orientation program for new staff attorneys and for new panel members. . . .
>
> In-service training and continuing legal education programs should be established on a systematic basis at the State and local level for [defense attorneys]. . . . (Standard 13.16)[4]

Unlike many other recommendations for training, those of the NAC spell out some qualitative concerns. The commentary to the judicial education standard recommends: judicial orientation program and visits to state institutions; annual state seminars of 2 to 3 days, with a report from the court administrator on the needs, deficiencies and innovations of the court system and a report on national trends in judicial education programs; courses on techniques and skills used in judging and on matters of substantive law and procedure, such as recent developments in criminal law, sentencing problems and evidence; and, in-service training with visits to state institutions and criminal justice system intercommunication. Specialized subject programs are advocated, such as programs on psychiatry and law, theory of government, sentencing, and court administration.

Prosecution training, according to the NAC, should begin with orientation of new assistants into office structure, procedure, and policies; the local court system; and the operation of the police agencies, lasting about one week. In-service training should feature seminars on such subjects as law of search and seizure, confessions, substantive criminal law, exercise of prosecutional discretion, and trial strategy.

Defense training content would vary according to its source. National training would emphasize entry-level skills in a two- to four-week program on such topics such as constitutional law, trial skills, criminal investigation, and appellate advocacy. Local orientation programs should emphasize local court structure and procedure, bail practice, office procedure, plea negotiation practices of the prosecutor, and community resources available to aid the defendant in formulating sentencing alternatives. Statewide training for new defenders should offer substantive criminal law procedure and post conviction remedies unique to the state. The NAC standard also specifically mentions the use of seminars and demonstrations as training techniques.

3. *Recent developments.* Since the establishment of the Law Enforcement Assistance Administration, substantial progress has been made in strengthening the institutional infrastructure for provision of judicial process training and education, in accordance with some of the key Commission recommendations. With the stimulus of LEAA assistance and growing state recognition of the need for judicial and legal continuing education, there now exist national, state, and local training and CLE programs in far greater numbers than in the past. In addition to the three judicial programs existing in 1968, LEAA discretionary funding now supports national judicial training through the American Academy for Judicial Education and the American Bar Association Appellate Judges' Conferences. LEAA funding supports the two national colleges for defense and prosecution as well as the Institute for Court Management programs for court administrators. A National Institute for Trial Advocacy assists both defense and prosecution in acquiring these crucial skills. Block grant funding by LEAA has supported the establishment of state judicial education centers and programs and statewide prosecutor and defense training agencies and programs, and has enabled local agency personnel to be paid travel and other expenses to attend national training programs. In addition to these direct training efforts, LEAA funding also supports a variety of technical assistance programs and provides limited management and planning training as well.

State recognition of the need for training in these key occupations has not only brought about the establishment of new training programs, but also their institutionalization within government. In addition, a number of states have established training requirements for the publicly employed legal professionals in the courts, particularly for the judiciary. Three states have adopted mandatory continuing legal requirements for all attorneys and judges.[5]

The substantial contributions of LEAA and the states notwithstanding, numerous problems remain in providing adequate training. Among key issues addressed in this chapter are: the adequacy of law school preparation for future criminal justice practitioners and the quantitative and qualitative adequacy of existing entry level and in-service training programs for prosecutors, defenders and judges.

B. Occupational Analysis Findings

A point of departure in the NMS assessment of the qualitative adequacy of existing legal training and

education programs was the identification of the major tasks performed by members of each of the three key legal criminal justice occupations. These tasks were developed by panels of experts in each field and validated through field interviews with small samples of practitioners in ten states. Respondents were also asked to rate the importance of these tasks, to indicate how these tasks were learned, and to assess the adequacy of their own training for performance of these tasks. In addition, respondents were asked to assess the proficiency of newly assigned personnel in these positions, in relation to needed proficiency standards for effective performance, based on detailed task-related skill and knowledge checklists.

The lists of major tasks performed by judges, prosecutors and defenders appear in Charts V–1—3. A detailed report on these findings is included in Volume VIII, Part 3. Some of the key findings are summarized below:

- *Judges*. Task checklists were completed by 41 judges, most of whom presided over courts of general jurisdiction. Their average age was 50 and their average terms as judges were about five years. Among the most critical tasks performed by these judges were presiding over criminal trials, sentencing, and management of the criminal calendar. Yet, 20 percent of those interviewed reported that they had received insufficient training for presiding over criminal trials; 24 percent were insufficiently trained for their sentencing roles; and 37 percent, for managing the criminal calendar. These, and almost all other specialized judicial tasks, had been primarily learned on the job. Formal training ranked second—but much lower—in order of importance, while law school education was consistently ranked last as a source of training for judicial skills.

  Analysis of responses to the skill and knowledge checklist revealed that in almost every category, the level of proficiency of typical newly assigned judges was substantially below that considered necessary for capable performance. The gaps appeared to be particularly critical in such areas as knowledge of criminal law rules and procedures, policy regarding ex-

Chart V–1

Principal Tasks Performed by Judges

- Hears testimony and reviews affidavits in order to justify the issuance of warrants
- Conducts bail hearings
- Conducts preliminary hearings (probable cause)
- Presides at arraignment hearings (entry of a plea)
- Advises defendant of his right to counsel and appoints counsel when appropriate
- Waives propriety of plea of guilty or nolo contendere entered by or on behalf of the defendant in order to decide whether plea is proper or in accordance with the law
- Conducts and mediates conferences in chambers with the prosecutor and defense counsel
- Rules on requests and motions (venue, continuance, etc.) by defense and/or prosecution
- Interviews and evaluates potential jury panel candidates (Voir dire)
- Orients members of the jury panel
- Presides over criminal trials
- Questions witnesses when appropriate to clarify testimony
- Considers and decides upon legal procedure matters at the bench and in chambers
- Insures the security of the courtroom and environs
- Issues instructions to the jury
- Researches and writes legal opinions and memoranda when required or when he deems necessary
- Analyzes and evaluates all evidence and other material available concerning cases of persons pleading guilty or found guilty in order to arrive at an imposed sentence
- Presides in emergency situations (commitment orders)
- Conducts review hearings in connection with conditional sentences in order to modify or revoke or determine further action necessary for problem presented
- Composes letters to persons concerned with case
- Reads/reviews legal opinions, publications in order to keep abreast of new developments
- Consults and exchanges information with other judges
- Performs liaison tasks with community and citizen groups and media
- Presents and discusses ideas to social services agency representatives, legislative representatives, and community groups
- Manages the criminal calendar
- Attends and participates in formal and informal judicial education programs
- Monitors correctional facilities in the jurisdiction
- Performs miscellaneous administrative tasks
- Presides at juvenile hearings and over matters relating to juveniles

Source: National Manpower Survey. Volume VIII. Field Analysis of Occupational Requirements and Personnel Management in Criminal Justice Agencies

Chart V–2

Principal Tasks Performed by Prosecutors

- Obtains or causes to be collected records and evidence of alleged law violations
- Interviews scene witnesses and officers who were at the scene of an alleged crime, officers of the Mobile Crime Laboratory, and other investigators
- Compiles and analyzes information and evidence collected by law enforcement officials, investigators, and other judicial system in order to determine whether sufficient information and probable cause exist
- Screens cases, advises citizens as to appropriate course of action or decides whether or not to bring formal charges against an individual or individuals
- Gives testimony before the grand jury when requested or on his own initiative
- Represents the state at preliminary hearings
- Reviews and evaluates physical and testimonial evidence in a case in order to determine whether additional evidence is necessary
- Supervises or assists case investigators
- Consults with superiors, technical experts, and associates in order to make accurate judgments and formulate further plans for case preparation or strategy
- Negotiates with defense counsel concerning charges pending against a defendant
- Conducts legal research
- Prepares, responds to, and files motions and/or memoranda
- Orients witnesses
- Interviews and evaluates prospective jurors
- Prosecutes alleged law violators in a criminal court
- Reviews and analyzes proposals and information about an offender who has pleaded or been found guilty, in order to make recommendations
- Participates in conferences, lectures, and training sessions
- Reviews and evaluates existing case load and calendar schedule
- Reads/evaluates/analyzes inquiries obtained from various sources and writes material in the form of correspondence, reports, and records
- Meets and communicates with LE/CJ personnel in order to keep his legal knowledge current, to enable adopting successful innovations, and to have a store of ideas for possible improvement in his work area
- Meets and confers with citizens, members of the LE/CJ system and offenders in order to help prevent crime and other violations of law, and to promote a general understanding of the authorities, responsibilities, and objectives of the LE/CJ organization and system
- Supervises offenders in diversion programs

Source: National Manpower Survey. Volume VIII: Field Analysis of Occupational Requirements and Personnel Management in Criminal Justice Agencies

ercise of discretion, conduct of trials and sentencing practices.

- *Prosecutors.* Task and knowledge checklists were completed by 45 prosecutors, principally in medium and larger-sized cities, who had an average of nearly three years of prosecution experience. Among the prosecutor tasks which ranked high in frequency, and in terms of time spent, were development of evidence through interviews and other sources, negotiation with defense counsel and actual prosecution of cases in a criminal court. Substantial proportions of respondents indicated that they had insufficient training for these tasks, ranging from 19 percent for negotiation with defense counsel, to 30 percent for court trial prosecution, and 40 percent for development of evidence and related case screening activities.

  The level of proficiency of typical newly assigned prosecutors was reported to be below the level needed for capable performance for all major aspects of task-related skills and knowledges including, particularly, knowledge of jurisdictional rules and procedures, knowledge of criminal law procedures, case preparation practices and conduct of trials.

- *Defenders.* The occupational analysis for defenders was based on responses from 33 public defenders, with an average of about 2½ years of defender experience. The responses suggested even more pronounced deficiencies in prior training for key tasks than those for the prosecutors. An average of about 40 percent of those interviewed reported they had received insufficient training for such tasks as interviewing clients, review of evidence, negotiation with prosecutors or judges, and representation at clients' trials or sentencing. In all of these and in related practical legal tasks and knowledges, the defenders had relied primarily upon on-the-job learning, and—minimally—upon their law school education as the source of training. With limited exceptions, the proficiency of typical newly assigned personnel was found to be much lower, on all of the applied skill and knowledge requirements, than that considered needed for effective job performance.

Chart V–3

Principal Tasks Performed by Defenders

- Represents clients at police line-ups and interrogations
- Interviews and consults with clients in order to decide on case objectives and report on progress
- Represents clients at preliminary hearings
- Represents clients at bail hearings
- Interviews scene witnesses and officers who were at the scene of an alleged crime, officers of the Mobile Crime Laboratory, and other investigators
- Reviews and evaluates physical and testimonial evidence in a case in order to determine whether additional evidence is necessary in the preparation of a criminal case
- Supervises or assists case investigators in order to establish facts and document evidence necessary in the preparation of a criminal case
- Consults with superiors, technical experts, and associates
- Negotiates with the prosecutor and/or judge in order to have charges or sentence against his client reduced in exchange for a plea of guilty or to have the case dismissed for other consideration
- Conducts legal research
- Prepares, responds to, and files motions and/or memoranda in order to present a certain position prior to, during, or after trial
- Orients witnesses in order to assure that potential witnesses have a basic understanding of the proceedings and allay anxiety that might confuse them
- Interviews and evaluates prospective jurors
- Represents clients at trial
- Collects and evaluates information about client needs in order to plan and recommend dispositional alternatives in the best interest of his client
- Represents client at sentencing
- Prepares, writes, and files appeals
- Determines grounds and represents defendants in seeking post-conviction remedies
- Participates in conferences, lectures, and training sessions
- Reviews and evaluates existing case load and calendar schedule in order to negotiate a practical calendaring of cases
- Reads/evaluates/analyzes inquiries obtained from various sources, received in writing, and writes material in form of correspondence, reports, and records
- Meets and communicates with LE/CJ personnel in order to keep his legal knowledge current, to enable adopting successful innovations, and to have a store of ideas for possible improvement in his work area
- Meets and confers with citizens, members of the LE/CJ system or offenders in order to help prevent crime and other violations of law, and to promote a general understanding of the authorities, responsibilities, and objectives of the LE/CJ organization and system
- Supervises offenders in diversion programs

Source: National Manpower Survey. Volume VIII: Field Analysis of Occupational Requirements and Personnel Management in Criminal Justice Agencies

The implications of this field assessment are clear. Significant proportions of the practitioners in all three key legal adjudicative occupations who were interviewed by the NMS staff considered themselves inadequately trained for some of their major tasks, and virtually all considered that newly recruited personnel were generally deficient in the practical skills and knowledges required for effective performance of these roles. The discrepancies were most pronounced for defenders and prosecutors; somewhat less so, for judges—reflecting their greater maturity and trial experience.

It must be emphasized that the above findings were based on small and not necessarily representative samples. They are, however, consistent both with the assessments of the limitations of existing legal education and training programs, made by the National Advisory Commission and other expert groups, and with related findings on the criminal justice content of undergraduate law school programs, reviewed in the following section.

C. The Role of Law Schools in Preparation for Criminal Justice Careers

Of the approximately 400,000 persons employed as lawyers or judges in the United States in 1974, a relatively small proportion—approximately 50,000—were actually directly engaged in the key criminal justice occupations of judges, prosecutors or public defenders. However, it is estimated that about 40,000–45,000 additional private attorneys engage—to some extent—in criminal law practice as private defenders. Thus nearly one fourth of those actively engaged in the practice of law have some responsibilities associated with criminal justice, on either a part-time or full-time basis. Other lawyers serve as government executives or legislative, whose responsibilities may include oversight or policy roles in relation to the criminal justice system. If job mobility is also taken into account, e.g., the lawyer in private practice who began his career as an assistant prose-

cutor, it is likely that as many as one-third of all lawyers have had significant contact with the administration of criminal justice in the course of their careers.

As noted in Chapter II, most newly recruited attorneys in prosecution and indigent defense agencies enter these positions shortly after law school graduation, with little or no previous trial experience. Similarly, a large proportion of newly elected or appointed judges are likely to have had limited experience in criminal justice practice. Thus, the extent to which undergraduate law school education prepares graduates for roles in the criminal justice field has important implications for their ability to perform effectively in these positions.

Graduation from a law school is a requirement for admission into the bar in almost all states. In the fall of 1975, nearly 117,000 students were enrolled in 163 undergraduate law schools accredited by the American Bar Associaton. The most recent graduating class for which information is available is that of 1974–75, when 29,971 undergraduate law degrees (J.D.) were awarded.[6] New admissions to the bar have been even higher; in calendar year 1974, new admissions based on bar examination were 33,358, including 882 graduates of nonaccredited law schools and 5,147 from non-ABA, but state accredited, law schools. An additional 882 law graduates were granted the "diploma" privilege for bar admission. Thus, of a total of 34,240 new admissions, 26,211 or 76.6 percent were from ABA-accredited law schools.[7]

The prevailing educational philosophy of the undergraduate law schools (reviewed in more detail in Volume V, Chapter VIII), focuses on mastery of legal analytical skills, combined with a broad overview of the substantive principles of law. Since formal accredited specialization—analogous to that in the medical field—has not yet emerged in the practice of law, emphasis is on introductory and broad survey courses, and on development of basic legal research and analytical skills, to develop the competence of "thinking as a lawyer". This philosophy implies that the more practical legal skills, including pretrial and trial procedures, as well as specialized expertise in particular fields of law, will be mainly acquired through a process of on-the-job "apprenticeship" or practical experience, either as a law clerk or as a junior practicing attorney.

An analysis of criminal law course offerings and course requirements of the ABA-accredited law schools was made in 1975, as part of the NMS survey, to provide data on the scope and availability of such courses for law school undergraduates. This analysis indicated that nearly all law schools had an established requirement for completion of a course in either criminal law or criminal procedures by first-year students. As shown in Table V–1, since 1966, there has been a small shift in emphasis from a requirement for a substantive criminal law course to courses in criminal procedures. The percentage of schools requiring first-year criminal law courses dropped from 96 percent to 88 percent between 1966 and 1975, while the proportion requiring criminal procedure courses rose from 28 percent to 30 percent. This moderate shift in emphasis may, however, mainly reflect recognition of the increased importance of constitutional law procedural issues (e.g., *Mapp, Miranda*) rather than an increased emphasis on procedural and administrative aspects of criminal justice practice, generally. For example, procedural discussion typically omits any extended treatment of plea bargaining either as a process which lawyers utilize or as an element of administrative justice.

This shift in emphasis from substantive to procedural law during the first year of law school, while slight, has been complemented by a modest overall increase in the proportion of criminal justice courses in the total law school curriculum—from 4.3 percent in 1966 to 6.8 percent in 1966 (Table V–2).

In 1975, the median number of courses and seminars on criminal justice topics was 5.5, as compared with 4.0, in 1966.[8] Perhaps half of the increase in criminal law courses and seminars resulted from additional seminars—not courses. Jackson and Gee found that elective criminal law courses generated only 4.5 percent of the total of all elective

TABLE V–1

Percentage of Law Schools Offering or Requiring First-Year Students to Have Courses in Criminal Law or Procedure, 1975 and 1966

	Percent of Law Schools	
	1975 (n = 162)	1966[b]
Offering criminal law	98[a]	100
Requiring criminal law	88	96
Offering criminal procedure	78	69
Requiring criminal procedure	30	28

[a] Of the three law schools not offering a criminal law course in the first year, two include criminal law materials in a criminal process course, while one is a "clinical" law school, not offering a traditional curriculum.

[b] Del Duca, "Continuing Evaluation of Law School Curricula—An Initial Survey," Journal of Legal Education, 20 (1968): 309 ff.

Source: 1975 data based on NMS analysis, catalogues of 162 ABA-accredited law schools.

TABLE V–2

Total Curriculum Offerings in Criminal Justice as a Percentage of All Law School Courses, 1975 and 1966

	1975	1966
Criminal justice as percent of all law courses and seminars	6.8	4.3
Criminal justice as percent of all law courses excluding seminars	5.8	N.A.

Source: 1975 data from NMS analysis of law school catalogs, 1976. 1966 data from Jackson and Gee, *op.cit.*

law school credit hours (number of students times course hour credits). Although the average enrollment for criminal justice courses was 48 students per class, compared with 41 for all electives, the relative number of criminal law courses (but not seminars) was low.

Table V–3 suggests that a law student seeking to major in criminal justice law might be able to do so in a number of law schools. However, for the great bulk of law students, the first-year courses in criminal law and procedure are their sole exposure to criminal justice in law school. Moreover, the scope of such preparation is not encouraging, judging by the materials currently in use. The most extensively used casebooks on criminal law, for example, discuss criminal procedure only after the materials on criminal law have been completed. In most texts, procedure is presented in a manner that emphasizes constitutional issues rather than demonstrating the interrelatedness of criminal justice operations. For example, the relationship of plea bargaining to prosecutor overcharging or to judicial sentencing decisions is usually not covered in these texts.

TABLE V–3

Incidence of Different Types of Specialized Criminal Justice Courses and Seminars Among Law Schools in 1975

Type of Course or Seminar	Perc. Law Schools Offering the Course (n = 162)
Advanced criminal law	55
Advanced criminal process	38
Corrections	39
Juvenile justice	55
Police-related	4
Administration of criminal justice (System)	34

Source: National Manpower Survey Analysis of law school catalogs, 1976.

Similar problems exist with criminal procedure casebooks. In addition to emphasizing constitutional law, the casebooks commonly treat the elements of procedure as entities unto themselves. The dynamics of criminal court procedures are usually not discussed. Such omissions may affect significant tactical decisions: whether to hold a probable cause hearing, or weighing alternative actions which, if uncritically treated, may result in waiver of otherwise important procedural rights.

In order to compensate, in part, for the limited coverage of procedural subjects and of related operational skills, a large and growing proportion of law schools offer clinical experience to advanced undergraduate law students normally in their third year. In 1975, 124 of the 163 ABA-accredited law schools offered clinical law programs.[9] Of these, 65 percent included a criminal justice component: defense, prosecution, or corrections. The importance of clinical law programs is that they, in conjunction with summer internships in prosecution and defender agencies, provide day to day exposure to the realities of criminal justice operations. Thus, agencies and law schools share in this manner the burden of preparing graduates for criminal law functions. Moreover, the supervision by the academic faculty (when applicable) has the advantage of enabling the law student to gain insight into the equity and efficiency of court procedures, as well as his or her own actions. Such insights are not achievable in any other context.

The NMS executive surveys indicated that 55 percent of prosecutors and 59 percent of defenders give hiring preference to law students with clinical law experience. About 11 percent of the reporting prosecutors permit law students to prosecute felony cases under supervision. An additional 15 percent permit misdemeanant prosecution by law students in their offices.

At the same time, it must be recognized that only about 20 percent of all law graduates were found to have clinical law experience, and a much smaller percentage have criminal law experience. Thus, clinical programs for criminal law are still more important for their potential, than for their present, contributions.

The limitations of undergraduate law-school programs, as a direct preparation for the positions of assistant prosecutor and assistant defender—suggested by the preceding analyses—are further confirmed by responses of chief prosecutors and public defenders to the NMS survey. As shown in Table V–4, a large proportion of the respondents consid-

ered law school graduates as inadequately prepared for such functions as trial advocacy, criminal trial procedure, and juvenile family law and court procedures, in contrast to much more favorable assessments of their preparation on such subjects as substantive criminal law, constitutional law and legal ethics. One of the results of inadequate preparation of most law school graduates for criminal justice-related positions is to place a greater burden upon employing agencies to provide supplementary training to newly hired personnel, through closely supervised on-the-job learning experiences, as well as formal courses. The following description, based on the report of NMS field visits to a number of large and medium-sized prosecution and defender offices, describes the prevailing practice in these offices:

"Once hired, new attorneys are never sent into the courtroom to sink or swim. Every office (of those visited) has some system for developing the attorney's skills without causing undue harm to the office, the public or the accused. In addition to formal and informal orientation programs, the young attorney is led through a series of assignments graduated in difficulty. . . The length of time spent in each of these training cycles varies with the individual and the opportunities to move, but most offices feel that it takes a year to become a minimally competent trial attorney." (Volume VIII, p. 846).

It must be emphasized, however, that the above description of practice in larger prosecution or public defender agencies clearly cannot apply to the situation of the large number of smaller offices often staffed by only one or two attorneys. The latter offices, normally have little or no in-house training capabilities. Moreover, it is clear, that in view of the high turnover among these staff attorneys a substantial proportion have less than the minimum length of experience needed to become "minimally competent," in the full range of required skills.

TABLE V–4

Assessment of Adequacy of Preparation of Law School Graduates by Heads of Prosecution/Defense Offices[a]

Functional Area of Preparation	Percent of Office Heads Assessing Preparation as Adequate	
	Prosecution	Defense
Juvenile family law and court procedure	36	18
Criminal trial procedure	32	27
Trial advocacy	32	26
Law of evidence	60	53
Substantive criminal law	64	60
Constitutional law	79	79
Legal ethics	85	74

[a] Percentages adjusted for "no response."
Source: National Manpower Survey, Prosecutors and Public Defenders, 1975.

From the standpoint of the law schools, the following improvements are recommended:

- Increased emphasis should be placed on closely supervised clinical programs, preferably in the setting of an operational agency.
- Curriculum offerings in criminal justice should be expanded along the lines proposed in an illustrative model curriculum (Volume V, Chapter VII), with increased emphasis on practical legal skills.
- Faculty and institutional improvement should also be encouraged by supporting activities such as greater involvement in criminal justice research, internships in criminal justice agencies and development of better linkages between law faculty and operating criminal justice agencies.

D. Prosecutor Training

1. *Entry-level training.* As indicated in the preceding section, the development of the needed professional skills of attorneys—whether in criminal or civil practice—relies upon a process of on-the-job experience and specialized training to supplement the broad foundations provided in undergraduate law school courses. Traditionally this process—in common with that in many other professional and skilled occupations—has consisted primarily of progressive assignments under supervision of more senior personnel, i.e., informal on-the-job orientation and "learning by doing." Exclusive reliance upon this process has some obvious limitations, as previously noted, particularly in small organizations not amenable to specialized breakdowns of legal tasks by order of difficulty and in situations where workload pressures compel immediate assignment of junior attorneys to more complex and demanding tasks. These have resulted in development of more formal entry-level training, or orientation, programs for both assistant prosecutors and defenders, normally provided shortly after their entry into employment.

Not all new entrants to positions of assistant prosecutor have an equal need for such training. As noted in Chapter IV, about one-fifth of such new entrants may have prior trial experience, while others

may have become familiar with agency practices through prior experience with the agency as an intern, in a clinical program, or as a law clerk. Nevertheless, in most cases, entrants need systematic training on prosecution office policies and procedures, on relationships with the courts and police, and on such practical issues as exercise of discretion in screening or charging of defendants. This training is typically provided to state and local prosecution attorneys either by the agency itself or by a state prosecutor training program.

In addition to such entry-level training, there is a need for programs of in-service training for more experienced attorneys to develop specialized competencies not taught in entry-level training or acquired through on-the-job experience, and to keep current on implications of new laws, policies or procedures. When such training is provided by external sources, it has been referred to as continuing legal education (CLE) in this report.

Information on the current extent of entry training was provided by state and county prosecutors who responded to the NMS survey. About 38 percent of all respondents, mainly in the smaller agencies, indicated that their agency provided no formal entry-level training to new assistant prosecutors during their first year of employment (Table V–5). An additional 8.5 percent provided only basic orientation of one day or less. Thus nearly one-half of all prosecution agencies surveyed provided no formal entry-training other than brief orientations to their newly hired attorneys.

Larger agencies, with 10 or more assistant prosecutors, were much more likely to have formal entry-level training than smaller offices. Since these agencies account for over one-half of total employment in state and county prosecution agencies, a weighted average, based on total employment in each size group, indicates that agencies employing about two-thirds of all assistant prosecutors offer formal entry-level training to newly hired personnel.

Only about one-third of the agencies which provided any formal entry-level training (including those providing basic orientation only) reported that they provided such training through in-house training resources (Table V–6).

TABLE V–5

Percent of Prosecution Agencies Providing Formal Entry-Level Training for Assistant Prosecutors and Length of Training, by Agency Size, 1975

(Percent Distribution)

Length of Training	All Agencies	Agency Size—Number of Assistant Prosecutors			
		1–4	5–9	10–24	25 and Over
No formal training	38.1	45.1	31.4	15.9	10.2
One day or less (basic orientation only)	8.5	8.0	11.0	7.2	10.2
Total, none or one day or less	**46.6**	**53.1**	**42.4**	**23.1**	**20.4**
Two days to one week	25.8	23.9	31.4	31.9	25.4
One to two weeks	19.4	16.6	21.2	27.5	32.2
More than two weeks	8.2	6.4	5.1	17.4	20.1
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Number of reports	(811)	(565)	(118)	(69)	(59)

Source: NMS Executive Survey, 1975. Covers state and county prosecution or legal services agencies. Responses are for agencies with one or more assistant prosecutors.

TABLE V–6

Percent of Prosecution Agencies Providing Formal Entry-Level Training, with In-House Training Programs, by Agency Size

Agency Size (Number of Assistant Prosecutors)	Percent In-House
Total	**32.9**
1–4	24.9
5–9	33.8
10–24	45.6
25 and over	75.7

Source: NMS Executive Survey, 1975. Based on responses from 502 agencies which provide formal entry-level training.

The proportion of these agencies providing in-house training varied from about one-fourth, for agencies with less than 5 assistant prosecutors to about three-fourths, for agencies with 25 or more assistant prosecutors. It seems probable, however, that many respondents to this question, in the case of the smaller agencies, construed "in-house" training to include state-level prosecutor training programs, as well as those directly operated by the agency itself.

Although equally comprehensive data on the extent of prosecutor training are not available for earlier periods, the available evidence suggests that there has been a very substantial increase in the provision of such training since the late 1960's. Thus, a small scale survey by the National District Attorneys Association (NDAA) in 1970, covering 18 metropolitan prosecutor offices, found that—at that time—only 4 had formal entry training and that 6 did not even have a program of formalized on-the-job training.[10]

The improvement that has occurred, particularly in the case of the smaller agencies, has been due in considerable measure to the growth of statewide prosecutor training programs. A recent study by the National District Attorneys Association indicates that 29 states had statewide training programs that provided training to both new assistants and new chief prosecutors.[11] In fiscal year 1975, 25 of these programs received LEAA financial assistance. Other information from the National Association of Attorneys General, when combined with the NDAA data, indicates that only one state provides no external prosecutor continuing legal education.[12] Training may not be statewide, however, and may not be available every year in each state. In about eight states that had prosecutor training in the period from 1972–74, there was no such training in 1975. Finally, it should be noted that only a few of these programs included specific entry training components.

A second source of external prosecutorial training is the various CLE organizations, including the National College of District Attorneys (NCDA), which has, through 1976, provided entry-level training for new chief prosecutors, but not for new assistants. Whether derived from a state prosecutor training program or from NCDA, entry training vis-a-vis CLE programs may not be offered at a time when new hires first require it. It is not uncommon for a new prosecutor to be on the job several months before attending entry-level training. In some states, state training coordinator programs may be available only during the summer and, hence, 6 to 10 months may elapse before a new prosecutor can attend a training course.

2. *In-service training.* The NMS survey also developed information on the provision of in-service training, or continuing legal education, to experienced attorneys, i.e., those with at least one year of experience (Table V–7). About two-thirds of all agencies and about 90 percent of the larger agencies, reported that they provided some assistance for external continuing education in the field of prosecution, whether in the form of administrative leave, tuition support or by other means. Only 30 percent however, had an established policy that required experienced assistant prosecutors to participate in some type of job-related continuing education. An even smaller proportion, less than 15 percent, reported that they provided *in-house* formal in-service training. This proportion ranged from only about 12 percent, in the case of the smallest agencies, to 61 percent, for agencies with 25 or more employees. Thus while most prosecution agencies provide some support, or encouragement, for continuing legal education of their personnel, most of this training is provided by external sources.

TABLE V–7

Agency Practices on Provision of Continuing Legal Education (CLE) or In-Service Training, to Experienced Assistant Prosecutors, by Agency Size, 1975

Agency Size (Number of Assistant Prosecutors)	Percent of Agencies Requiring CLE	Percent Providing In-House Formal Training	Percent Providing Assistance for External CLE
Total	30.2	14.5	67.0
0	N.A.	N.A.	52.8
1–5	29.2	12.2	69.5
5–9	33.3	12.8	84.7
10–24	35.8	29.0	91.2
25 and over	27.6	61.0	86.5
Number of reports	(798)	(808)	(1276)

Source: NMS Executive Survey, 1975.

Some indication of the sources of external training is provided by responses to a question requesting prosecutors to identify the agencies from which their office had received assistance for training, including training provided to chief prosecutors as well as assistant prosecutors (See Table V–8).

TABLE V–8

Sources of Training Assistance for Prosecution Offices

Source	Percent Receiving Assistance
National District Attorneys Association	38%
National College of District Attorneys	29
State Prosecutor Office	27
State Bar Association	22
State Attorney General	20
Accredited Law Schools	12

Source: NMS Executive Survey, 1975.

Thus, training provided by two national-level organizations—the National District Attorneys Association and the National College of District Attorneys—was most frequently utilized for this purpose, followed by programs sponsored—or operated—by state-level prosecution offices or by the state bar associations.

3. *Training content.* Those agencies which reported that they conducted in-house training programs were also requested to indicate the topics covered in these courses. With limited exceptions, the general subject

coverage provided in the in-service programs parallels that provided in entry-level courses, with topics such as constitutional law, law of evidence and criminal trial procedure included by nearly all programs (Table V–9). Subjects such as screening policies and procedures, and charging practices, are almost always covered in entry-level training, and—less frequently—in the in-service programs. The latter, however, are somewhat more likely to emphasize substantive criminal law developments and trial advocacy. Subjects which are less frequently covered include juvenile and family law procedure, pretrial diversion and appellate advocacy, in part because many prosecution agencies and staffs do not have responsibility for these functions, or because on-the-job training procedures are considered adequate.

One of the more significant gaps in coverage appears to exist in the case of juvenile or family law procedure. About 85 percent of all prosecution agencies reported that they had responsibilities in this area. Yet, among those conducting in-house training, less than one-half included this topic in their program. There is no reason to believe that training for juvenile court responsibilities is less needed than training for adult criminal court responsibilities; the tasks are no less complex or important. For example, in jurisdictions that include status offenses (i.e., noncriminal behavior which may be against state law, the basis for a delinquency determination), a juvenile who is "out of control" may be prosecutable; however, a parental claim to that effect may reflect parental neglect. A decision to prosecute the juvenile requires social work investigation, for which the prosecuting attorney is not trained, nor is he even commonly aware of the need. Even criminal behavior by the juvenile may be but a symptom of a dysfunctional family situation. Many jurisdictions resolve this problem by using probation intake staff to make the initial determinations of whether to charge the juvenile. But others do not, resting this responsibility solely with the prosecutor. In either case, the prosecutor needs to determine at charging or on subsequent review whether quasi-criminal proceedings will likely result in a positive solution for the juvenile, the parents, and society. For even where a social worker has screened some cases, the prosecutor must have the option and the concomitant expertise to screen or divert others from further criminal-like proceedings.

TABLE V–9

Training Content of In-House Entry and In-Service Prosecutorial Training Programs, 1975

Topic	Percent of Offices Including Topic	
	Entry (n = 168)	In-Service (n = 120)
Constitutional law	95.3	100.0
Juvenile/family law procedure	48.8	40.4
Substantive criminal law developments	70.0	79.8
Law of evidence	96.0	100.0
Charging practices	92.1	72.3
Screening policies and procedures	100.0	72.3
Plea negotiation practices	97.6	85.1
Pretrial diversion/deferred prosecution	49.6	45.7
Case investigation	100.0	84.0
Preliminary hearing procedures/tactics	85.8	66.0
Jury selection	81.9	80.9
Criminal trial procedure	96.9	90.7
Trial advocacy	70.9	75.5
Appellate advocacy	12.6	22.3
Scientific evidence	43.3	N.A.
Polygraph use	17.3	22.3

Source: NMS Executive Survey, 1975.

One specialized subject, not separately identified in Table V–9, is training for organized crime prosecution. This training is specifically mandated by Section 407 of the Crime Control Act. Under this authority LEAA has undertaken to fund training programs sponsored by the National College of District Attorneys, National Association of Attorneys General, and the Organized Crime Institute at Cornell University Law School. In addition, technical assistance is provided by publications such as the Battelle Institute's *White Collar Crime Manual for Prosecutors*, a similar manual on use of state revenue statutes as the basis for prosecution, and a Racket Bureau Prescriptive Package. Other LEAA-funded efforts include a number of state organized crime councils directed to increasing public and policy makers' awareness of this problem and often resulting in needed legislation.

The need for organized crime prosecution training is not being completely met by LEAA-funded training, however. Based on information provided by LEAA staff to the NMS, it would appear that the 1975 NAAG seminar, for example, was little more than an orientation or consciousness-raising program, rather than a serious training effort in "how to do it." This was a two-day program, so little more could be expected. The National College of District Attorneys seminars were twice as long. One of the three programs given by NCDA was an advanced four-day seminar, open only to those having taken the basic four-day program. About 130 prosecutors and inves-

tigators attended the two basic training courses, and 40 attended the advanced course.

The most ambitious training effort on the subject is that of Cornell University's Institute, which offered a one-week program in April 1976 to about 100 participants. The Institute is unique in explicitly tying its training program to a parallel research effort on the effectiveness of organized crime prosecution efforts.

Left untouched by these efforts is the need for technical assistance or intensive training for offices that wish to establish organized crime prevention units or that have immediate tactical problems in pending investigations and prosecutions.

5. Adequacy of prosecutor training programs. The above survey findings have noted some positive aspects, as well as some apparent limitations, in the scope and qualitative adequacy of existing prosecution training programs. As compared to the situation in the late 1960's, substantial progress has been made in the establishment of an infrastructure for provision of prosecution training, including the combined resources of in-house training (mainly by larger agencies), of state-wide programs and of national-level programs. The availability of both formal entry-level and CLE opportunities is still limited, in the case of staffs of smaller agencies, which—by reason of size limitations—are also least equipped to provide structured on-the-job training experiences. Moreover, from a qualitative standpoint, the large proportion of entry-training courses which are of less than two weeks duration, as well as more apparent limitations in content coverage noted above, point to the need for continuing qualitative improvement in existing programs.

Confirmation for the above assessment is provided by responses of chief prosecutors to the following question: "On the whole, how satisfied are you with all aspects of training at your office?" Only 10 percent of prosecutors indicated that they were either "extremely" or "very" satisfied with their program, while nearly one-half (47 percent) of the respondents expressed varying degrees of dissatisfaction with the training offered by their agency. Moreover, in response to an earlier question concerning the "most serious" manpower problem in their office, 15 percent of all respondents ranked inadequate training as their most serious problem.

Although inadequate budgets for training are clearly a major factor in limiting the effectiveness of training programs, responses by prosecutors indicated that other constraints were of nearly equal importance. The most significant of these were the effects of high workloads, both in limiting availability of staff for training and of senior personnel for providing training. About 8 out of 10 prosecutors indicated that these were serious or moderate limitations on their training programs. Hence, provision of additional training funds may not, alone, be sufficient to assure that personnel would be available for such training.

E. Defender Training

1. *Need for training.* As described in Chapter II, the public responsibility for provision of defender services to indigent persons accused of crimes is met by a variety of arrangements, including publicly operated defender agencies, by contractual arrangements with private organizations such as legal aid societies and by use of assigned counsel. About 3,600 attorneys were employed as defenders or assistant defenders in public defender agencies in 1974, or about 3,200 in terms of full-time equivalents. It is estimated that an additional 3,000 "full-time equivalent" attorneys were engaged in indigent defense work in contract agencies or as assigned counsel, based on the necessarily arbitrary assumption that the average compensation of the latter categories equals that of publicly employed attorneys. However, since representation of indigent clients is a part-time and—often—incidental activity for many assigned counsel, the total number of lawyers engaged to some extent in provision of indigent defense services is probably several times as great as the full-time equivalent estimates.

Some indication of the potential need for defender training is provided by estimates, based on limited survey data, which imply that as many as 45,000 private attorneys were engaged to some extent in criminal or juvenile defense work in the United States.[13] Of these, perhaps as many as 10,000 might be considered criminal law specialists, while the remainder may engage in criminal or juvenile law work for less than one-fourth of their time. Despite the approximate nature of these estimates, it is evident that the number of lawyers potentially in need of specialized training for indigent defense is several times as great as the number actually employed in public defender agencies.

The survey data on the actual scope of defender training in this report is, however, primarily based on the NMS survey of executives of public defender agencies. This was supplemented by a small-scale survey of the larger contract defender agencies, and by analysis of available data on the external contin-

uing legal education programs, since the latter are virtually the only source of specialized post-graduate training available to most private defense attorneys.

2. *Entry-level training.* Information on the current extent of formal entry-level training was provided by nearly 200 public defender agencies whose administrators responded to the NMS survey. About 32 percent of these agencies provided no formal entry-level training to new assistant defenders during their first year of employment (Table V–10). An additional 15 percent provided only a brief orientation of one day or less. Thus—as in the case of the prosecutor agencies surveyed—nearly one half provided no formal entry training other than short orientations to their newly hired attorneys. Among agencies which did provide such training, about 45 percent (or 24 percent of all respondents) provided between two days and one full week of training only, while only a small proportion reported entry-training courses of more than two weeks in duration.

About one-half of the defender agencies which provided either orientation or formal entry-training reported that this training was provided through in-house programs. The extent of in-house formal training varied by size of agency, as in the case of the prosecutor offices. Nearly 95 percent of the offices with 25 or more staff attorneys had such in-house programs, as compared to only 25 percent of offices with 14–24 attorneys, and to 14 percent for offices with fewer than 14 staff attorneys.

Supplemental information on the extent of in-house training, in *contract* defender offices, was also obtained from a separate NMS survey of 32 such offices in larger cities. About 80 percent of these offices offered in-house entry-level training. However, about one-fourth of the latter agencies provided such training through structured on-the-job training only, while about three-fifths of the total provided formal training courses for this purpose.

The proportion of all newly hired assistant defenders who need—and do not receive—formal entry-level training cannot be precisely estimated from the above data, since the smaller agencies which are less likely to provide such training are for that reason also more likely to rely upon experienced, part-time attorneys for their recruitment. Based on the available evidence it is probable, however, that between one-fourth and one-third of the staff attorneys recruited by public defender agencies in 1974 or 1975 were inexperienced personnel who were not provided with any formal entry-level training by their agencies, other than short orientations.

3. *In-service training.* Responses by public defenders to the NMS survey questions on the extent of agency support for—and provision of—continuing legal education to their staff generally paralleled those of the prosecutors:

- About three-fourths (74 percent) of all agencies provided some assistance for *external* continuing education for attorneys, relevant to their job, through administrative leave, tuition support or other means.
- About one-third had a policy *requiring* that experienced assistant defenders participate in some type of job-related continuing education.
- However, only 28 percent of the agencies actually provided formal in-house training programs for this purpose. As in the case of entry-level training, the larger offices, with 25 or more staff attorneys, were the most likely to have such programs.

The supplemental survey of contract defender offices also found that formal in-house training, in the form of periodic seminars or classroom instruction, was limited to agencies with 25 or more staff attorneys.

Information on the subjects covered in both entry-level and in-service programs conducted, in-house, by public defender agencies is included in Table V–11. Certain subjects, such as constitutional law and criminal trial procedure, are included—with about the same frequency—in both entry-level and in-service programs. Entry-level courses, however, more frequently cover certain basic practical skills such as case investigation, plea negotiation practices and preliminary hearing procedures, whereas more specialized subjects, such as evidence, substantive law developments and juvenile law are more frequently included in the courses for more experienced personnel.

TABLE V–10

Percent of Public Defender Agencies Providing Formal Entry-Level Training for Assistant Defenders and Length of Training, 1975

Length of Training	Percent of Agencies
None	32
One day or less (orientation only)	15
Total, none or one day or less	(47)
Two days to one week	24
One or two weeks	21
More than two weeks	8
Total	100

Source: NMS Executive Survey, 1975. Based on 191 responses.

TABLE V–11

Percent of Defender Agencies Including Selected Training Topics in In-House Training Programs

Training Topic	Entry-Level (n = 61)	In-Service (n = 55)
Case investigation or preparation	79%	65
Constitutional law (arrests, search and seizure)	74	78
Plea negotiation practices	74	56
Preliminary hearing procedures	69	56
Criminal trial procedure	69	73
Substantive law developments	69	73
Evidence	66	78
Jury selection	62	62
Juvenile/Family law	62	75
Court procedure	41	36

Source: NMS Executive Survey, 1975.

The above findings highlight the importance of external CLE programs, particularly for the smaller agencies. In fact, while only about one-fourth of the agencies provided some in-house training to their staffs, nearly one-half of all assistant and chief defenders in offices responding to the NMS survey (about 1,200 of 2,500 defender attorneys) had received some external CLE in 1975.

The major sources of training assistance for these defender personnel are shown below:

Program	Percent of Agencies Receiving Assistance
National College of Criminal Defense Lawyers and Public Defenders	32%
State Defender Office	21
National Legal Aid and Defenders Association	17
State Bar Association	15

Source: NMS Executive Survey, 1975. Percentages not additive, since agencies may use multiple training sources. (N = 179).

Although the above survey data provide a basis for assessing the quantitative adequacy of existing defender training programs, and provide some insight as to areas of course emphasis, no systematic assessment of training program quality was possible as part of this study. Public defenders were, however, queried on whether they were satisfied with their agency's overall training programs—including those for entry level and more experienced personnel. In response to this question, 45 percent of the respondents expressed varying degrees of dissatisfaction; 44 percent reported that they were "satisfied" with their agency's program, only an additional 11 percent reported that they were "very" or "highly" satisfied with the program. Inadequate training budgets and heavy staff workloads were most frequently cited, in that order, as the major constraints on the existing programs.

4. *Training for chief prosecutors and defenders.* The preceding sections have focused primarily on training provided to staff attorneys—assistant prosecutors and defenders—rather than on the training needs of heads of prosecution and public defender agencies. The professional tasks performed by many chief prosecutors and defenders in small offices overlap with, and are frequently identical to, those performed by the staff attorneys in larger offices. Thus, among all chief prosecutors and defenders responding to the NMS survey, 69 percent of the prosecutors and 53 percent of the defenders identified the task of preparation, supervision and review of legal cases among the three major responsibilities which were most important in their position, as compared to much smaller proportions who indicated that their managerial or liaison duties were the most demanding. However, in larger jurisdictions, the role of the chief prosecutor and chief defender becomes that of a manager, who—in addition to direct participation in, or supervision of, the most important and difficult legal prosecution and defense cases—must also establish office policies, serve as the official spokesman and representative of his agency with other governmental agencies and the community, and must conduct all the normal responsibilities of management, including setting priorities, monitoring case flows, and fiscal and personnel administration. Moreover, although prosecutors and defenders may enter these positions—whether through election or appointment—with varying degrees of competency and experience in criminal law practice, they are, with few exceptions, lacking in professional preparation for many of their policy and managerial responsibilities.

For this reason, chief prosecutors and defenders were requested, in the NMS survey, to identify those specialized training subjects, or courses, which they would recommend as being especially helpful for future incumbents in their position, as well as to separately indicate which of these courses they themselves had taken. A total of 16 areas was listed, ranging from traditional legal subjects, such as constitutional law and trial advocacy, and more specialized technical subjects, such as forensic pathology, to non-legal subjects, including general management training, human relations and community relations. Their responses are summarized in Tables V–12 and V–13.

In response to the question concerning recommended specialized training courses for chief prose-

TABLE V–12

Recommended Specialized Courses and Actual Courses Taken by Chief Prosecutors, 1975

Training Topic	Percent Recommending Course	Percent Who Attended Course	Difference (1)–(2)
	(1)	(2)	(3)
Law of evidence	73	39	34
Trial advocacy	71	42	29
Constitutional law	67	46	21
Substantive criminal law developments	55	39	16
Juvenile justice law	37	17	20
General management/ administration	37	19	18
Jury selection	36	21	15
Scientific evidence identification	36	22	14
Plea negotiation practices	30	15	15
Community relations	29	6	23
Forensic pathology	26	14	12
Psychiatry and the law	25	13	12
Human relations	25	5	20
Appellate advocacy	20	7	13
Program management (e.g., pre-trial diversion, defender prosecution)	20	10	10
Polygraph use	13	9	4

Source: NMS Executive Survey, 1975 (N = 1344).

TABLE V–13

Recommended Specialized Courses and Actual Courses Taken by Chief Defenders, 1975

Training Topic	Percent Recommending Course	Percent Who Attended Course	Difference (1)–(2)
	(1)	(2)	(3)
Law of evidence	62	44	18
Trial advocacy	61	46	15
Constitutional law	56	47	9
Substantive criminal law developments	51	41	10
General management/ administration	49	23	26
Psychiatry and the law	41	18	23
Scientific evidence identification	37	29	8
Jury selection	36	25	11
Human relations	33	6	27
Plea negotiation practices	31	19	12
Appellate advocacy	31	14	17
Forensic pathology	31	18	13
Juvenile justice law	30	16	14
Community relations	24	4	20
Program management (e.g., pre-trial diversion, defender prosecution)	20	8	14
Polygraph use	19	16	3

Source: NMS Executive Survey, 1975 (N = 252).

cutors and defenders, the types of courses most frequently recommended by both categories were those related to professional legal subjects: law of evidence, trial advocacy, constitutional law and substantive criminal law developments. These were the only subjects recommended—in that order—by one-half or more of both the prosecutors and public defenders responding to the NMS survey. Since over three-fourths of the prosecutors in this survey, and nearly 60 percent of the defenders, were in small agencies—those with fewer than 10 employees—this emphasis upon professional legal subjects is understandable. In the latter agencies, particularly, the principal tasks of the prosecutor or defender are directly related to actual handling of cases or to direct supervision or review of the work of staff attorneys.

One method for identifying significant gaps in prosecutor and defender training programs is to compare the proportions of respondents recommending particular training subjects with the proportion who have actually received training in these subjects. These differences are shown in the last columns of Tables V–12 and V–13. For prosecutors, these differences were 20 percent higher in the following subjects: law of evidence (34 percent), trial advocacy (29 percent), community relations (23 percent), constitutional law (21 percent), juvenile law (20 percent), and human relations (20 percent). For defenders, the "most needed" additional training courses, based on this criterion were: human relations (27 percent), general management/administration (26 percent), psychiatry and the law (23 percent) and community relations (20 percent). Thus, for both prosecutors and defenders, these comparisons point to the need for increased emphasis on subjects outside of the traditional CLE curricula and which provide needed perspectives to prosecutors and defenders in their roles as criminal justice executives. The limited exposure to such training for prosecutors and defenders is illustrated by the fact that only about 5 percent of the respondents had taken any specialized courses in community relations or human relations, and that only about one-fifth had taken a course in management subjects.

Chief prosecutors and defenders were also queried as to whether they had taken any comprehensive or "omnibus" prosecutor training courses, of the types offered by the National Colleges of District Attorneys or Defenders, or by state prosecutor or defend-

ers training programs. A majority of the respondents—56 percent of the prosecutors and 61 percent of the defenders—reported that they had attended such courses. Based on responses to this and the preceding questions, it appears that a large proportion of all incumbent prosecutors and defenders have had some specialized post-law school training relevant to their current position. However, in view of the brief duration of most of the available training courses and of their primary focus upon professional legal content, there have been significant gaps in adequacy of this training—particularly for the policy and managerial aspects of their positions.

F. Judicial Training

The judicial role entails tasks and responsibilities distinctive from those required for general law practice. These include such basic duties as presiding at trials and hearings, issuing instructions to juries and imposing sentences, as well as non-legal duties, such as court calendar management. However, unlike many other countries, the United States does not provide any formal preservice education or training to specifically prepare individuals for serving as judges. Since most judges are either elected, or are appointed by political officials, selection criteria vary widely from state to state and by type of court. Even a law school education is not always a requirement for selection in the case of many limited jurisdiction courts. In view of these limitations, particular emphasis has been placed upon provision of, and improvement of, judicial training, as an important element of any comprehensive program for upgrading the performance of the court system. Information on the current need for, and status of, judicial training, presented in this section, was based primarily on NMS field visits to selected court systems in 10 states, supplemented by findings from recent surveys conducted by the National Center for State Courts and the California Center for Judicial Education and Research.

1. *Entry-level training*. Table V–14 summarizes the extent to which states (including the District of Columbia) provide entry-level training for new judges. Despite the critical need for such training, only about one-half of the states provided such training for new judges in courts of general jurisdiction and only about two-fifths, in courts of limited jurisdiction. Of the 38 states still employing lay justices of the peace, 26 provided entry training for these personnel.

While entry training may be available, it is not necessarily mandatory nor is it always utilized. Only

TABLE V–14

Number of States Providing Entry Training for New Judges, by Type of Court, 1975

	General Court (n=51)	Limited Court[a] (n=47)	Lay Justice[b] of Peace (n=38)
Number of states with courts	51	47	38
Number of states providing training	24	19	26

[a] Excludes states with unified court systems that have no lower court and no separate training for parajudicial personnel.

[b] States with lay justice training provided by attorney general or a judicial association are included in this table.

Source: State Court System Administrators and National Center for State Courts data file.

seven states require entry training for all judges; one state requires entry training only for its general court judges, and two states require entry training only for limited court judges. Twenty-one states do not require entry training for any judges, but provide entry training with attendance voluntary for trial judges. In many instances, judges are "expected" to attend training, although it is voluntary.

Several of the states listed as providing entry training for trial judges in Table V–14 do not provide the training themselves, but use one or more LEAA-funded national judicial training programs. A few other states send judges for entry training to the National Colleges in Reno, Nevada; Denver, Colorado; or Boulder, Colorado.

In addition to formal training programs, in at least 13 states an "advisory," or experienced, judge volunteers to assist new trial judges.[14] In many of these states, the judicial education office has prepared guides to assist the advisory judge. It is often suggested that new judges first sit as observers on the bench beside the advisor judge, before taking cases.

The most successful of the "buddy system" methods observed, in the course of NMS field visits, provides for assignment of a senior judge-advisor from a list of highly experienced trial judges who have indicated a willingness to serve in this capacity. Immediately upon assignment, these advisory judges are sent a detailed guide suggesting various steps to be followed in providing orientation and assistance. In addition, the new judge is provided with a set of materials including: bench and desk books, sentencing guides, descriptions of the state judicial system, and a list of printed and recorded materials available to new judges. Also distributed are audio cassette

tapes, which address some very practical problems facing the new judge such as organizing a library, handling certain types of offenses, and even selecting a judicial retirement plan.

Other orientation programs in various jurisdictions are offered during the course of the incumbent's first year and concentrate on problems identified by the new judges as well as selected substantive law and procedural issues. Some judges prefer this type of orientation program to preservice training because it offers judges time to gain practical experience prior to classroom training. The teaching techniques utilized in orientation programs are similar to other inservice sessions and may include: lecture, seminars, workshops, film, and video tape presentations. The time set aside for orientation training may range from a long weekend session to a two week course totalling over 84 hours of instruction. In the latter case, instructional materials developed by the training coordinators have filled five volumes consisting of over 2,500 pages.

A number of states visited that presently offer no programs indicated they would like to offer them. For those jurisdictions with current programs, plans are under way for more sophisticated and faster delivery, in an effort to provide better training as soon as possible.

2. *In-service judicial education.* As shown in Table V–15, all but a few states report that they have some on-going state-coordinated program for continuing education of their judicial personnel in 1976. In 46 states and the District of Columbia, in-service training programs were reported as provided for general court judges, and in 44 jurisdictions, for limited court judges. (In two states, there are no limited courts). A smaller number—31 states—reported such programs for state appellate court judges.

TABLE V–15

Number of States Providing In-Service Judicial Education by Type of Judge, and by Source of Training, 1976 [a]

Source of Training	Category of Judge		
	Appellate	General Trial Court	Limited Jurisdiction Court [b]
Total, all sources	31	47	44
In-state only	11	6	11
In-state and national	8	32	27
National only	12	9	6

[a] Including the District of Columbia.

[b] Two jurisdictions do not have limited courts nor parajudicial officials with criminal law responsibilities.

Sources: NMS Survey of State Court Administrator Offices, 1976 and National Center for State Courts data file, 1976.

A majority of states offering judicial training programs use a combination of in-state and national training resources. However, a number of states—typically those with smaller numbers of judges—relied solely upon national judicial training programs. These data were based upon reports submitted to NMS by state court administrative officials, supplemented by data available from the National Center for State Courts. However, a review of LEAA block grants for 1975 indicated that three of the four states which did not report a state-wide judicial training program had received 1975 LEAA funding for sending some local trial judges to national programs. Thus virtually all states now appear to have some provision for continuing education of their judicial personnel.

a. *State programs.* Based on NMS field visits to 10 states, the state-level training programs offered to sitting judges are very diverse in their structure and content. In some states, format and subject matter is modified from year to year, whereas other states have established more standardized training structures. The types of state in-service training seem to be organized into four different models, in the jurisdictions visited, including: an "adjunct" program; a weekend training session; a special training session or institute; and a more comprehensive "omnibus" training course.

- The adjunct program is so identified because it is usually offered as part of some other judicial activity, usually the annual or semi-annual meeting of the judicial conference made up of either all or specific classes of judges within a state. Usually held on a weekend at a hotel or conference center, these sessions provide lectures and workshops on preselected topics such as evidence, recent decisions, rules changes or sentencing. This training model was considered of limited value by some respondents because it is mixed with other business and social events; hence training "may get lost in the shuffle."
- The second model is a two or three day session—traditionally held on weekends—which is devoted exclusively to training and held once or twice a year. Normally the agenda will include five or six topics of general interest to all judges such as evidence, recent developments in the law, recent appellate court actions, sentencing, and one or two special topics such as taking guilty pleas, or judicial relationships with the press. A number of states now man-

date that all judges receive some continuing legal education each year, and this type of program or model usually provides a way to meet such requirements. One alternative approach to this model was to offer two programs, one in the spring and one in the fall, making attendance at one mandatory, and attendance at the other optional.

- The third model is the special session; it is usually directed at a special group of judges and deals with one special topic for a short period of time. For example, one state visited has an annual sentencing institute; only issues related to this topic will be on the agenda. A program at one of these sessions might include presentations by members of various post adjudicatory agencies such as the parole board, community-based treatment programs, and drug and alcoholic diversion programs. In addition to lectures, workshops are often used as are video taped mock sentencing proceedings, so judges may observe their behavior and be critiqued. As with most other training sessions, key speakers from national organizations or other court systems make presentations on timely topics. Another type of special session is directed at special classes of judges and even non-judicial personnel. For example, many states have annual sessions for traffic court or juvenile court judges. State training offices are also providing programs for court clerks, reporters and even bailiffs or court officers at special seminars held annually.
- The final model is a longer term training program lasting up to two weeks and just beginning in a number of larger states, including California, Florida, Indiana, Michigan, Texas and Ohio. These extended in-state programs, like some of the national judicial training efforts, are often called judicial colleges. Thus, in addition to orientation and training programs for new judges, the California Center for Judicial Education and Research conducts three institutes for justice, municipal, superior, and juvenile court judges and referees.

In addition to sponsorship of these formal sessions or courses, a number of state judicial training offices offer various specialized training services to assist judges. The service most often cited is the provision of printed and recorded materials, including deskbooks and bench books, that allow judges to have easy access to vital information, such as instruction and advice to defendants who choose to plead guilty. The bench book can provide a script to insure that the judge asks all appropriate questions of defendants and can give guidance for further action according to the responses received. These books are regularly updated with the most current rule changes and procedures for implementing appellate court findings and decisions. By outlining step-by-step procedures, the bench book can be of benefit not only to the new judge but also to the more experienced jurist who finds that after trying civil matters for over six months, he must suddenly preside in juvenile hearings. Audio cassettes have also become very popular among judges as a quick way to receive essential information about specific topics. Even video tapes are presently being utilized by some states to supplement their training programs.

The final aspect of special services may include the preparation and distribution of printed materials, newsletters, and reporter services including the most recent decisions of state and federal trial and appellate courts. These services may be the only way for some judges to keep current on a regular basis.

b. *National programs.* Despite the recent growth of state-level training activities, a number of national-level organizations continue to be the major providers of systematic training for various categories of judicial personnel. These include five LEAA-funded programs: The National College for State Trial Judges, the American Academy for Judicial Administration, the National College for Juvenile Justice, the Institute for Judicial Administration Appellate Judge Services, and the American Bar Association Appellate Judges' Conference. In addition, the Institute for Court Management offers educational programs for court administrators and juvenile court personnel, both of which may include judges. Some national training programs are also offered by other national professional organizations, such as the National Conference of Metropolitan Court Judges, the American Judicature Society and the National Center for State Courts. Short descriptions of three of these programs are presented below.

(1) The largest of these programs is that of the *National College of State Trial Judges.* Every jurisdiction visited by the NMS field survey had sent judges to the College; a number of participants had returned two or three times. The National College, located in Reno, Nevada, primarily offers two residential programs: a four-week summer program for general jurisdiction judges, and a two week program for special court judges. In addition, a variety of graduate programs, lasting one or two weeks, is offered for more experienced judges who have com-

pleted the initial core program. In 1975, the National College conducted 23 resident sessions, 29 judicial seminars and 6 special programs, which were completed by a total of 1,071 judges.

Courses provided in the resident sessions included such subjects as criminal law, evidence, search and seizure, family law, sentencing, traffic law, probate law, alcohol and drugs, the judge and the judge and the jury, and court administration. Extension programs on similar topics were offered in 29 locations to 2,552 participants. About 18 of these courses included or were directed solely at judges of limited jurisdiction courts.

In the 11 years of its existence, the college has graduated 2,638 judges of general jurisdiction courts (over 50 percent of such judges), and 585 judges of limited court jurisdiction. Its 239 regional seminars have had 14,208 attendees—judges of both general and limited jurisdiction courts.

The faculty of the college includes trial judges, criminal defense practitioners, prosecutors, leading academics, and practitioners in other fields, such as corrections or drug treatment. A series of textbooks has been prepared on a variety of topics for use in the classroom. Titles include works on judicial discretion, special problems (trial conduct, ethics, contempt), sentencing, evidence, recent developments, and others. The college is also preparing procedural pamphlets on the judicial role in plea bargaining and at the preliminary hearing. First drafts have been completed and publication is expected by the end of 1976.

A series of evaluations of the National College conducted by outside evaluators found no major problem with the content or quality of the program. What caveats appeared were related primarily to class size. Also noted by the evaluators were the unsatisfactory relationships between national and state training programs. In several instances, the establishment of a state judicial college has had the effect of precluding that state's judiciary from attendance at national programs.

(2) *The American Academy of Judicial Education* directs the vast majority of its national and in-state programs to judges of limited jurisdiction courts. In 1974, it sponsored 11 national programs attended by 420 judges. Two week orientation programs are offered to newer judges and advanced one week graduate courses are also provided.

Unlike the National College, however, the Academy focuses on the development and programming of in-state training conferences. In 1974, 31 of these conferences were held and attended by almost 2,500 judges. These conferences are always initiated by the states themselves with the Academy providing support in such areas as program development, planning, faculty selection, and materials. The Academy assists the states in procuring funds (primarily from LEAA) for financing these sessions. The Academy also uses video tapes, cassette instructor's guides and outlines in specific substance and procedural areas as individualized training materials for each state. Like the National College, the Academy conducts research for the purpose of updating and developing new materials as well as publishing its own journals and newletters.

States visited that have taken advantage of these cooperatively developed training programs have found them to be beneficial and well received. However, the future of the Academy is uncertain for several reasons. Unlike the National College, the Academy relies on the LEAA for most of its financial support; this support may not always be forthcoming. Some problems have also developed between the College and the Academy over possible conflicts or overlapping in the training of limited court judges. Finally, there may come a time in the near future when many jurisdictions possess the in-state capability to provide the services and training the Academy now offers.

(3) The LEAA-funded *National College of Juvenile Justice* sponsors four two-week residential programs for judges and other juvenile justice personnel each year and joins with other organizations in presenting regional programs, which are often cooperative efforts with state agencies. The curriculum is interdisciplinary, with an emphasis upon the behavioral and social sciences. In 1975, the College participated in a number of such programs. Many of these were, however, for corrections and probation personnel, rather than for the judiciary. Only four training programs were held in 1975 for judicial personnel in conjunction with the state courts.

It should be noted that the organizational locus of juvenile courts varies from state to state, and that in many jurisdictions, there are no specialized judges whose responsibilities are limited to juvenile cases. Such cases may be handled by a division of a general or limited jurisdiction court, by an element of a probate or family court or by a separate juvenile court. Nevertheless, the special status of juveniles under the law and the need for close linkages with probation agencies and with a variety of community resources and programs, requires specialized knowledge and training not adequately provided either in undergraduate law school programs or in non-spec-

ialized CLE programs for judges or other adjudicative personnel. These are illustrated by a list of training topics of specialized interest to juvenile judges, in Chart V–4.

c. *Training for lay judges.* The use of lay judges in criminal proceedings occurs under three conditions. A lay judge may act as a judicial officer in: preliminary hearings and issuances of warrants; criminal trials including instances of defendants' waiver of a right to a judge trained in the law; and sentencing hearings, through waiver of a right to trial, plea of guilty, and right to law-trained judge. The first two types of proceedings do not require waiver in all instances and have been subject to challenge as a denial of defendants' due process rights. While this argument has been accepted in some states, the United States Supreme Court has upheld the constitutionally of lay judges making decisions in arrest warrant proceedings and holding bench trials in criminal cases where a trial *de novo* appeal is possible (*North* vs.*Russell,* decided June 28, 1976).[15]

The use of lay judges in criminal proceedings is authorized in 38 states, in all but one of which the judges may sentence defendants to incarceration after trial. In 26 states, trial *de novo* procedures only are available for appeals, in compliance with *North* vs. *Russell*. In five states, lay judges preside at criminal trials, but appeal is on the record, rather than *de novo*. In five other states, both procedures are used, depending upon the particular court in which the trial was held.

Most of these lay judge courts have general misdemeanor jurisdiction and may therefore sentence defendants for up to one year in jail. In 14 states, however, they have limited sentencing authority, ranging from 30 days to 6 months.

In all of these states there are upwards of 11,000 judicial positions for which lay judges are authorized. In the absence of legal training, the only manner in which these judges can be qualified for such positions is through entry training. In 27 states, entry training is available for lay judges, including the one state where lay judges have no incarceration sentencing authority. This includes also the state of West Virginia, which has mandated training for new magistrates, beginning in 1977. Excluding West Virginia, 22 states have mandated training for lay judges, and four have voluntary training for their lay judges.

It should be noted that not all "mandatory" programs are equally stringent. For example, in New York, program attendance is required of the lay judges for only 80 percent of the classes. The length of the training programs for lay judges also appears inadequate. In New York, the program lasts 6 days, and only half of that time is directed at criminal law, evidence, and related topics. Such qualitative limitations are particularly important because there commonly are no educational qualifications for the lay judge position. For example, in Mississippi, the legislature recently acted to place on the ballot a constitutional amendment requiring a high school degree for lay judges; this minimal qualification is typical of states where lay judges are permitted. In

Chart V–4

Training Program Topics of Greatest Interest to Juvenile Judges

(By Rank Order)

- Alternatives to Institutions
- Probation Supervision
- Corrections
- Community Resources
- Drug Abuse and Control
- Adolescent Psychology
- Detention
- Hearing Procedures
- Inherent Powers of the Juvenile Court
- Dependency and Neglect
- Volunteer Programs
- Evidence in Juvenile Hearings
- U.S. Supreme Court Decisions
- Rural Delinquency
- Institutions
- Case Law Review
- Court Management
- Urban Delinquency
- News Media Relations
- Juvenile Court Computer System
- Appellate Problems
- Waiver

Source: Kenneth C. Smith, "A Profile of Juvenile Court Judges in the U.S., *Juvenile Justice* (August 1974), p. 37.

South Carolina, where no educational qualifications exist, there were three justices of the peace who had less than a sixth grade education in 1975. Only a few lay judges in that state have gone to college.

In about one-third of the states with lay judges, bench manuals are available for their use. The unavailability of such manuals in the remainder of the states with lay judges is a major concern. Clearly entry training is not sufficient for their legal training. The result of the absence of adequate training or bench books is that lay judges are reported to depend often upon the prosecutor (if one is available) for legal advice. But such reliance does not comply with the requirements that the judicial officer be a neutral, unbiased decision maker.

The prevailing practices in the United States may be contrasted with that in the United Kingdom. The English lay judges receive preservice training before sitting in court, through attendance as observers at court proceedings and through lectures, discussion, and self-learning (books). New magistrates visit penal institutions and attend meetings of their bench. Two booklets are provided: a general manual and one on sentencing. Continuing education is also stressed through conferences, meetings, and seminars. But even with all this training, lay judges in England also have clerks with legal training on whom to rely. This suggests that if non-legally trained judges continue to be authorized here, a combination of more intensive training and of legal support services is required for these key personnel.

d. *Current status of judicial education and training.* Although an assessment of the qualitative aspects of judicial training programs was not practicable, as part of this study, the materials presented in this chapter support the following conclusions concerning the need for, and adequacy of, existing programs.

(1) Our survey and occupational analysis findings have confirmed the critical need for formalized programs of training, continuing legal education and related supporting services, to prepare new entrants into judicial positions for their critical, and unique responsibilities and to assure maintenance and enhancement of their professional competencies. Neither undergraduate law school education, nor the typical experience acquired in the private practice of law, adequately equip most new judges for such new duties as presiding at trials, setting bail, sentencing or supervision of court calendars. Yet, these and related functions—all entailing large elements of discretion—have a critical bearing on the functioning of the courts, and of the criminal justice system as a whole.

(2) Substantial progress has been made in the past decade in developing, and improving the institutional base for training and education of judicial personnel, due—in large measure—to the availability of LEAA funding, either in the form of support for national level colleges or programs, or through the use by states of LEAA block grant funds for state training and continuing legal education activities. This is illustrated both by the growth of the national-level programs over the decade and by the fact that most states now have state-coordinated programs for judicial training and education.

(3) Nevertheless, progress has been uneven. The most critical deficiency appears to be in the availability of adequate entry-level training for new judges. Based on available information, less than one-half of the states systematically provide formal training programs for new judges prior to, or shortly after, their assumption of judicial duties. In addition, 12 of the 38 states utilizing lay judges apparently have no formal programs for their officials. The use of alternative training procedures, such as advisory judges, is preferable to not training at all; nevertheless it has clear limitations.

(4) The apparent availability of some form of continuing judicial education in nearly all states, indicated by our summary data, provides a very inadequate basis for assessing the adequacy of such training, in terms of the proportion of judges actually attending such programs, the length and types of training provided, and its usefulness. In contrast to the recent establishment in some states of judicial colleges, with comprehensive resident training programs and supporting services, many other state-level programs are still limited to short two or three-day training sessions often in conjunction with other activities.

(5) Since availability of judges for longer training programs is often a critical limitation in provision of such training, supporting services such as bench books, manuals, and evidence guides are an important adjunct, or complement, to formal training sessions. A number of states, such as California, provide models in this respect; however, only a few states have distributed even a single bench book to their judges.

(6) Finally, there is a need for improved articulation between state and national-level CLE programs for judges—as well as for prosecutors and defenders—and among the various national programs. Since the LEAA plays a major role in funding many of these programs—either directly or through block-grants—it should assume the initiative in establishing,

or encouraging, more effective coordination among these programs and institutions.

G. Major Recommendations

The responsibility for improving the professional skills of state and local judges, prosecutors and defenders is a shared responsibility. To the extent that deficiencies in education and training programs for adjudicative personnel exist, improvements will require joint actions by employing agencies, state training offices and external providers, as well as by those most directly involved, i.e., the potential recipients of such training and education. However, the LEAA and State Planning Agencies, as major sources of financial assistance for many of those programs, can play a pivotal role. The following recommendations are designed to suggest priorities, both for LEAA and SPA funding decisions, and for agency-level decisions on provisions of training and educational assistance to these key personnel:

- In view of the likelihood that a significant proportion of law school graduates will engage in some criminal law practice during their career, the typical undergraduate law school program has serious deficiencies, both in terms of the limited range of criminal justice course offerings and in their contents. In particular, it provides little or no preparation for the realities of the practice of administrative—as distinct from adversarial—justice, as illustrated by the widespread use of plea bargaining practices, nor does it systematically prepare the student with a knowledge of the needed procedural and trial skills. Seriously neglected, too, are any interdisciplinary courses which prepare future practitioners with an understanding of the relationships between the courts system, other elements of the criminal justice system and the broader complex of social institutions which influence upon the causes and prevention of criminal activities. The major responsibility for introducing needed improvements in the criminal justice aspects of the undergraduate law school curricula rests with the law schools, themselves. LEAA can, however, promote desirable initiatives by providing assistance for development of model criminal justice curricula and prototype programs for future criminal justice practitioners, by providing selective support for law school intern programs with criminal justice agencies, and by strengthening of law school faculty capabilities in the criminal justice field, through support of law school faculty research and internship arrangements.

- The most critical training need for all three categories of personnel—judges, prosecutors and defenders—is to establish formal entry-level training programs for agencies and jurisdictions where no program now exists, and to strengthen those existing programs which are clearly inadequate, by any acceptable standard. In the case of judges, the absence of formal entry-level programs for general and limited jurisdiction courts, in more than one-half of the states, and in 12 out of 38 states using lay judges, must be assessed in conjunction with existing practices in selection of judges, which—in many states—provide little assurance that the newly-elected or appointed judge has the specialized trial experience for adjudication of criminal cases. In the case of prosecutors and defenders, the needs for systematic entry-level training is most evident in the case of the smaller agencies, which—because of size—are often least equipped to provide either in-house formal training or supervised on-the-job training. In addition to the need for new state or local agency training programs, where none now exist, the limited duration of most existing entry training courses suggests that many of these courses are essentially general orientations to agency policies and procedures, rather than providing substantive and essential training content. This is likely to be the case for courses of less than one week in duration, which accounted for more than half of all prosecutor and defender agency programs in 1975.

- Continuing legal education or in-service programs appear to be more generally available, through a combination of national, state and local sources. However, the available information suggests some obvious qualitative deficiences. Juvenile law issues are often neglected. At the same time, there is a need for increased emphasis on inter-disciplinary subjects, such as community resources and community relations, and on management training, for those incumbents with significant management responsibilities. Establishment of regional centers for management training in all criminal justice fields—as proposed elsewhere in this report—would provide a desirable supplement to existing resources.

- In addition to the above recommended improvements in coverage of formal training programs, high priority should be assigned to well-coordinated programs for development and dissemination of bench books, manual, and similar self-instructional materials for judges—as well as similar materials for prosecutors and defenders. Our survey findings indicate that unavailability of personnel to attend training, because of workload pressures, is often as serious a constraint upon existing programs as lack of training funds. Extensive development and dissemination of self-instructional materials may prove to be the most cost-effective means of providing additional training under these conditions particularly in smaller jurisdictions and agencies.

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CHAPTER VI. THE COURT ADMINISTRATOR

A. Introduction

Virtually all recent appraisals of the Nation's court system have highlighted the need for modernization of court administration, and have recommended the appointment of professional court administrators, to assist judicial officials for this purpose. The National Advisory Commission on Criminal Justice Standards and Goals specifically recommended that an office of State court administrator be established in each state; that each trial court with five or more judges (or fewer, if warranted by caseloads) should have a full-time trial court administrator; and that regional administrative groupings of smaller trial courts be established, and also provided with the service of a full-time court administrator. Under the policy direction of top judicial officers, these administrators were to have broad responsibilities for a wide range of administrative and management functions, including operational responsibilities such as calendar or juror management, as well as provision of various administrative services.[1]

For this reason, court administrators were selected as one of the key judicial process occupations to be studied by the National Manpower Survey. Information on current employment of court administrators, on their duties and qualifications; and on the training needed—or received—by these personnel was obtained from a nationwide questionnaire survey of state and local court administrators. Unlike other categories of criminal justice officials surveyed by the NMS, no comprehensive nationwide directory of court administrators, or of courts with court administrators, was available for purposes of this survey. As a preliminary step, state offices responsible for court administration in each state were contacted by NMS and were requested to identify all court administrators in their jurisdictions, including those at the state or appellate court levels, attached to local trial or limited jurisdiction courts, or to groupings of such courts. For this purpose, "court administrators" were defined as "non-elected professional administrators concerned with caseflow through the court system, personnel management, planning and research, budget drafting and all other administrative and managerial business of the court or court system."

Based on this initial survey, a total of about 455 state and local court administrators was identified. Detailed questionnaires were addressed to these administrators, and completed by 334, or 73.4 percent. Information from this survey has been supplemented by a small number of field interviews with court administrators and by collateral information from other recent studies of this profession.

The following sections review the role and functions of court administrators, provide a profile of existing incumbents in terms of training and experience, and assess training and education needs for current and future incumbents of these positions.

B. The Court Administrator Role

Although the need for more efficient administration of the courts has long been recognized,[2] this function had typically been performed—and continues to be performed in many courts—as an added responsibility of a judge of the court, in conjunction with an elected clerk of the court and with supporting clerical or secretarial staff. The specialized position of professional court administrator is of quite recent origin. The first state court administrator position was established in New Jersey, by statute, in 1948.[3] Rapid growth in the number of court administrator positions ensued in the 1960's and early 1970's, as a result of increased emphasis on the need for improvements in court organization and management. As shown in Table VI–1, of 326 state and local court administrators responding to the NMS survey in early 1976, two-thirds reported that their positions had been established since 1970, and only 18 percent indicated that these positions were more than ten years old.

Court administrator positions now exist to varying degrees at all levels of the courts system. At the state level, there has been at least partial establishment of a state court administrator's office, under the authority of the highest state court, in 47 states.

TABLE VI–1

Year of Establishment of Court Administrator Positions

Year Established	Percent Distribution
1974–75	23.3
1970–73	42.3
1966–69	16.6
Before 1966	17.8
Total	100.0

Source: NMS Court Administrator Survey, 1976. Based on 326 responses.

(In at least eight of these, however, the state court administrator has limited duties only.) An additional 20 court administrator offices assist statewide trial systems or appellate courts. The large majority of court administrators, however, are attached to lower level courts—primarily trial courts of general jurisdiction courts. Of the 334 court administrators responding to the NMS survey, 76 percent were responsible for administration of trial courts of general jurisdiction, of whom more than half also had responsibilities for limited or special jurisdiction courts. About 15 percent were attached only to limited or special jurisdiction courts and 9 percent were not responsible for either type of trial court.

The roles and functions of court administrators vary significantly depending upon the types of courts which they serve and the organizational structure of the state court system. Where there is a statewide rulemaking power (embodied in the highest appellate court or judicial council) over the trial courts, the state court administrator will have more extensive managerial duties than where trial courts are independent. Generally, county rather than state funding of the trial courts suggests local independence, except in those states where a judicial council exists with specific statutory rulemaking authority (e.g., California). Where the trial courts are nominally independent of any other body, the state court administrator's job requires a high level of diplomacy in working out a service relationship with the trial courts. Conversely, the trial court administrator may have potential conflict of interest problems when that official is appointed or nominated by the state court administrator of the state high court rather than by the local trial court.

At the state level, there are two general types of court administrator offices. The most common is a court administrator office responsible for the entire state court system. In some states, the state offices may be responsible to the state supreme court, either for the administrative needs of the entire state court system or for some part of that system, i.e., that court or the general or limited trial courts. In some states, both types of state administration offices exist, a state system office and one in which the highest court will have a separate office of the clerk, who acts as the administrator for that court.

The second type of state administrator office is the specialized court administrator, who is responsible for providing services to a state court other than the highest court of the state, either a statewide trial court or an intermediate court of appeals, and who is responsible either to the judges of that court or the state court system office. Where different levels of courts are organized statewide but remain independent of each other, multiple state court administrators to serve each court are required.

The scope of responsibility of state court administrator offices is suggested in part, by the relative size of their professional staffs. Among the 42 state court administrator offices covered by the NMS survey, the number of professional staff members ranged from none in three states to 52 in Michigan. The overall average was 12.6 professional staff members per office.

The range of staff size was found to be even greater in the case of the trial court administrators responding to the NMS. Of 270 trial court administrators, over one half (146) reported having no professional staff assistants, even though at least one-third served more than one court. On the other hand, an additional 124 trial court administrator offices reported a total of 1,002 professional staff members. Of this total, one large metropolitan city reported 374 professionals, while no other office reported as many as 50 staff members. The average number of professional staff members, excluding this one city office, was about five per office, for those offices reporting at least one such employee, other than the court administrator.

In order to identify the tasks performed by court administrators, generally, two approaches were used. The first consisted of development of a relatively detailed occupational task checklist, based upon interviews with a small number of court administrators (Chart VI–1). Since this was based upon only eight interviews, this list may be considered as indicative of the types of tasks which some court administrators perform, but provides no basis for generalizing as to their importance or frequency.

The second approach was based on responses of court administrators to an NMS survey question

Chart VI–1

Occupational Task Checklist for Court Administrators

1. Analyzes the court system's fiscal needs in order to prepare, present, and justify the judicial system budget.
2. Testifies as a representative of the judicial system at budget hearings.
3. Supervises and monitors the fiscal administration of the judicial system.
4. Compiles and collects informaion about judicial system operations to evaluate and plan for effective management of the court system.
5. Solicits sources for additional funds to supplement regular appropriations.
6. Evaluates the performance, practices, and procedures of the judicial system.
7. Develops or modifies plans and procedures of dicial system to accommodate new developments or observe deficiencies.
8. Designs and supervises special projects or feasibility studies for the judicial system.
9. Supervises the day-to-day operations of the judicial system.
10. Supervises non-judicial personnel system for the court system.
11. Coordinates court reporter, special project and support services for judicial system.
12. Manages petty and grand jury systems for the court.
13. Coordinates space management and planning.
14. Manages the court's caseflow and case inventory control.
15. Coordinates the collection of information about the judicial system and court operations in order to prepare reports and disseminate information for the court internal staff, special groups such as the bar, and the public as necessary.
16. Prepares reports and/or testimony on impending legislation or proposed rule changes believed to have impact on the court system.
17. Communicates with internal staff, community and external groups, media representatives, educational and political organizations, bar associations, and others.
18. Prepares professional articles and speeches.
19. Responds to questions and problems identified or complaints filed by court personnel, persons having business with the court, and citizens.
20. Meets with judges, judicial councils, bar associations, etc., on a regularly scheduled basis or as requested to give and receive information and guidance.

Source: NMS final report, Volume VIII, p. 706.

concerning the major functions for which they were responsible. These responses indicated considerable variation between responsibilities of the state and the trial court administrators—and, among the latter group, between those who had professional assistants and those who did not (Table VI–2). Virtually all state court administrators included statistical management, fiscal management and evaluation and planning among their major functions. About 8 out of 10 also reported responsibility for personnel management and for space and equipment management. Relatively small proportions, at the state level, had responsibility for such operational functions as court calendar management, court services management (e.g., probation services) or for jury management. The latter duties are normally performed by the trial courts, whereas the state court system administrator is primarily concerned with oversight, coordination, planning and research as well as the provision of general assistance to the courts. Other statewide administrative functions may include judicial education services, legislative drafting or testimony, and responsibility for the state defender system.

Also of interest were the problems reported by the state court system administrators, either in their lack of authority or in the exercise of the authority granted to them. Eleven indicated that they had problems in getting the judiciary to delegate authority or to accept the exercise of authority by the court administrators. In six states, the administrators indicated that court unification would assist them, because it would increase control over local elected trial court clerks and other nonjudicial personnel, or because fiscal resources would increase with unification. Among additional needs cited were greater authority over judicial assignments, over hiring of office staff, and supervision of the law library.

The data on functions performed by trial court administrators indicate a higher frequency of responsibilities for operational functions such as calendar management and jury management, but lower frequencies for such functions as fiscal management or evaluation and planning. Trial court administrators without professional staff are much less likely to have certain management functions than those with staff assistants. The most frequent responsibilities of those without staff are for calendar management and

TABLE VI–2

Responsibilities of Court Administrators, by Level and Type of Office Court Served and by Presence of Professional Staff

(Percent performing selected functions)

Function	Total*	State Court System	Trial Courts	
			With Staff	Without Staff
Statistical management	89	100	90	81
Fiscal management	76	98	84	54
Evaluation and planning	69	95	72	59
Criminal management	72	80	88	60
Space and equipment management	75	77	83	60
Calendar management	78	34	86	82
Court services management	40	25	51	36
Jury management	53	11	70	51
Number of reports	332	44	124	96

* Also includes administrators for statewide trial and appellate courts and for limited or special jurisdiction courts.

Source: NMS Court Administrator Survey, 1976.

statistics, whereas more than 80 percent of trial court administrators with staff also report fiscal, personnel and space management, among their key functions. On a composite basis, 42 percent of all trial court administrators with staff performed all of the itemized management and administrative functions, other than management of court services, compared to only 19 percent of those without professional staff assistants.

The above responses thus suggest that the management scope of many incumbent trial court administrators is much more limited than that normally implied in the role of a professional court administrator. Further insight on this point was obtained from the following assessment based on NMS field visits to 15 trial courts, 13 of which were served by personnel bearing the titles of court administrator or courts coordinator:

> "of these 13 individuals, six were performing a wide range of duties related to court administration and management, while the remaining seven performed duties more typically limited to the functions of a court clerk and may simply have had their job titles changed during the past few years. All administrators were appointed public officials, and while some are given job security or protection by local civil service rules and regulations, for the most part they serve at the pleasure of the chief judge or judges *en banc* or judicial council. The requirements for the job may vary a great deal from jurisdiction to jurisdiction, and selection criteria are established accordingly. In some cities, the qualifications for court administrator are established by law. In other cities where federal or local funds have been provided for funding of administrative positions, job descriptions in contract proposals and grant awards may serve as the job requirement criteria. Applicants for these positions are usually nationally recruited through relevant publications, associations and professional journals. Where the duties of the job are mostly clerk-related functions, recruitment is normally limited to current court or municipal personnel pools. Even requirements for the more "professional" court administrator position may be distinguished by law-related and non-law-related criteria. For example, in one jurisdiction viewed, the job description of court administrator called for an individual with a law degree who could draft court rules and legal forms for the trial court. The judges in this city wanted a lawyer who was well versed in state and local law and procedure. In another jurisdiction visited, the court administrator position required professional manager's skills. Legal skills were not important here, and while not stated in writing, the judicial council had let it be known that they did not want a lawyer."[4]

As suggested by the above description, the title of court administrator is currently used to describe positions which vary considerably in responsibility and scope, ranging from those requiring broad management and legal skills, to others with closely circumscribed administrative and clerical duties. These differences in job functions are reflected in the selection standards for court administrators and in the diverse educational backgrounds, and work experience, of current incumbents, as described in the following section.

C. Profile of Court Administrators

1. *Educational background.* The educational attainment of incumbents of court administrators provides a useful indicator of both the nature of their positions and of the extent to which these incumbents have the basic educational background for assuming the full range of responsibilities associated with that of the professional court administrator. As shown in Table VI–3, respondents to the NMS court administrator survey have a very diverse range of educational backgrounds. At one extreme, 12 percent of the respondents reported only a high school level of educational attainment and an additional 24 per-

TABLE VI–3

Educational Attainment of Court Administrators by Level and Type of Court Served and by Presence of Professional Staff

(Percent distribution by specified level of educational attainment)

Educational Attainment	Total*	State Court System	Trial Courts	
			With Staff	Without Staff
No college	12	—	5	22
Some college	24	—	20	30
College degree	23	5	29	18
Master's degree	12	14	14	14
Law degree	29	81	31	17
Total	100	100	100	100
Number of reports	331	43	120	99

* Also includes administrators for statewide trial and appelate courts, and for limited or special jurisdiction courts.

Source: NMS Survey of Court Administrators, 1976.

cent had some college, but less than a four-year college degree. At the other extreme, 29 percent were law school graduates and an additional 12 percent had a master's degree or higher. Less than two-thirds (64 percent) were four-year college graduates—the minimum educational level currently required for entry into most professional-type positions.

The educational level of incumbent court administrators was found to vary significantly by type of court, and by the extent to which the court administrator (at the trial court level) had professional staff assistants. Among the 43 administrators of state court systems, 81 percent had law degrees and all had at least bachelors' degrees. In contrast, among administrators of trial courts, the percentage of those with law degrees was 31 percent, for those with professional staff, and 17 percent, for those without professional staff. Three-fourths of those with staff had at least a four-year college degree, but less than one half (48 percent) of those without professional staff were college graduates.

The above data, in conjunction with the previous description of functions performed by trial court administrators, thus tends to confirm that a significant proportion of current incumbents in "court administrator" positions—probably about one-third of the total—have relatively routine clerical and administrative duties, and have limited responsibilities for the broader management, policy and evaluation roles, associated with the professional court administrator function.

2. *Experience.* In view of the recency of most court administrator positions, a large majority of all incumbent court administrators were found to have been in their current positions for only a few years. About one-fourth of all respondents had been in their present positions for less than two years and over 70 percent had less than five years of service in their current positions (Table VI–4). Only about 8 percent reported more than ten years of experience in their current court administrator positions.

A substantial proportion of court administrators had however held prior positions in the field of court administration. Thus, whereas the mean length of service of court administrator's in their current position was less than four years, their total experience in the field of court administration averaged eight years, and nearly 30 percent reported ten or more years of total experience in this field.

3. *Prior positions.* A distribution of the most recent prior positions held by court administrators in Table VI–5, illustrates the diverse career paths followed in entry into this occupation. Almost one-half (48 percent) of all incumbent court administrators had held prior court positions, mainly as administrators or clerks—Deputy Clerks—of courts. Included in this category too, were a small number of former judges, mainly serving as state-level court administrators. An additional 24 percent of court administrators had held other managerial or administrative positions in non-court agencies or functions, while 14 percent had previously been employed as attorneys or law clerks. The remaining 14 percent had last been employed in a number of other non-court-related positions.

These variations in prior work experience are closely related to the differences in court administration functions in different types of courts. Thus,

TABLE VI–4

Length of Experience of Court Administrators, 1976

(Percent distribution)

Years	In *Present* Court Administration Position	In *Any* Court Administration Position
Less than 2 years	25.3	10.2
2–4 years	45.5	32.2
5–9 years	20.7	28.2
10–14 years	5.7	11.1
15 years and over	5.7	18.3
Total	100.0	100.0
Mean years	(13.9 Years)	(8.0 Years)

Source: NMS Court Administrators Survey, 1976. Based on 332 responses.

TABLE VI-5

Distribution of Court Administrators by Last Previous Position Held

Last Previous Position	Percent
Court Positions:	
Court administrator	5%
Deputy or assistant court administrator	14
Clerk of court; deputy clerk of court	22
Judge, magistrate or other judicial position	5
Other court positions, e.g., court reporter, bailiff	2
Total, court positions	48
Other Positions:	
Attorney	11
Law clerk	3
Management/administrative—	
Government	16
Other	8
All other	14
Total, other positions	52
Total	100

Source: NMS Court Administrators Survey, 1976. Based on 322 responses.

based on field visit reports, the trial court administrator whose functions were more clerically-oriented were likely to have been employees of the judicial system or of the local government for some time. Prior employment, usually in the clerk's office, had provided the practical experience and qualifications for the court administrator position, rather than specialized education or training. The professional management-oriented court administrators, on the other hand, were likely to be younger and better-educated, with diverse backgrounds in law and business administration, as well as in other professional court administrators positions. Such individuals were likely to be more mobile, and with considerable interest in court management as a career field, as well as in other areas of public administration.[5]

D. Professional Education and Training for Court Administrators

1. *Extent of specialized programs.* As illustrated by the diverse educational and work experience backgrounds of current court administrators, the field of court administration has not yet established commonly-recognized standards for qualification for these positions. This is due, in part, to the fact that specialized courses or programs for court administration are of quite recent origin. Prior to the 1950's, only a few law schools and political science programs included course components relating to judicial administration. The first institutional program in the field was that of the Institute for Judicial Administration, at the New York University School of Law, initiated in 1952. Three additional law schools, at the University of Southern California, the University of Denver and the State University of New York at Buffalo also pioneered in providing courses in judicial administration.

Most of these earlier programs, as well as those initiated by the Federal Judicial Center, were directed at lawyers or judges. The first major program designed specifically for training of court administrators was that of the Institute for Court Management, established in 1970 as a six-month certificate program on the campus of the University of Denver Law School. This program, supported by LEAA funds, graduated nearly 250 certificate holders in its first six years of operation and has provided a model judicial administration program for other educational institutions in this field.

The recent growth of interest in education for court administration is indicated by the fact that, by 1976, a total of 48 educational institutions offered courses or programs in judicial administration, including undergraduate law schools, other colleges and universities and specialized institutes. Of these only 15 offer degrees or certificates in the field of court administration, whereas other institutions offer courses without specialized degrees in this field.[6]

LEAA funding provides a limited amount of institutional support for these programs, including an annual grant of $225,000 to I.C.M. and smaller amounts to certain other national programs. An analysis of state block grant allocations in fiscal year 1975 indicates that an additional $180,000 was allocated for travel expenses and related costs, for attendance of court administrator staff at these national programs.

2. *Recommended education and training programs.* Court administrators responding to the NMS survey were requested to identify both the general academic fields and the more specialized training subjects considered most useful for court administration. The academic fields preferred by the largest numbers of respondents, among all categories of court administrators were management, law and public administration, in that order (Table VI-6). All of these fields were included among the top three choices by about one half or more of all respondents. In contrast, criminal justice specialization—or more technical specialization in computer sciences or accounting—were recommended by much smaller proportions of administrators.

Academic field preferences of court administrators tended to be correlated with the functional needs of their own offices or positions, as well as with their own educational backgrounds. Thus, among state court administrators—of whom about 80 percent were lawyers—an undergraduate law degree ranked first in preference, by a wide margin, followed by public administration and management subjects. Among trial court administrators, whose duties include much greater emphasis upon administrative and operational tasks, the management field was most frequently recommended, followed by law, public administration and business administration. Criminal justice specialization was considerably more popular among the trial court administrators then among the state court administrators, but nevertheless was recommended by only about one third of all trial court administrators.

Similar differences in emphasis, in terms of training course content, were indicated by the responses of different categories of court administrators (Table VI–7). Courses on court information systems ranked first in preference among state court administrators, followed by courses on methods of program planning and evaluation. Trial court administrators gave first priority to courses in case flow management, followed by courses in court information systems, but gave less emphasis to program planning evaluation courses—reflecting the lesser frequency of broad management responsibilities among trial court administrators.

TABLE VI–6

Recommendations of Court Administrators on Training Courses Especially Useful for Court Administrators

(Percent recommending)

Subject	Total	State Court System	Trial Court	
			With Professional Staff	Without Professional Staff
Caseflow management	85	66	85	98
Court information systems and record keeping	82	91	77	85
Personnel administration	70	70	71	65
Budget and fiscal management	69	66	68	53
Program planning and evaluation	67	75	65	70
Computer applications	62	68	65	56

Source: NMS Court Administrator Survey, 1976.

TABLE VI–7

Recommendations of Court Administrators on Preferred Academic Fields of Specialization for Court Administrators Position

Field	Percent Specifying Given Field Among Top Three Choices			
	Total	State Court System	Trial Courts	
			With Professional Staff	No Professional Staff
Management	61	56	57	66
Law	53	90	50	47
Public administration	49	63	44	48
Business administration	42	34	47	35
Criminal justice	25	14	25	36
Computer science	10	10	8	11
Accounting	10	10	10	10
None	3	—	3	4

Source: NMS Court Administrators Survey, 1976.

3. *Specialized training received by court administrators.* Court administrators were also queried on the extent of their own specialized training in the field of court administration. Only about one fourth (26 percent) had completed a special program of study in judicial administration before entering their current position. Of the latter, nearly one-half had attended the Institute for Court Management, while others had attended a number of other university programs or those of other national colleges, such as the National College of the State Judiciary. In view of the fact that significant numbers of incumbent court administrators had had prior experience in court administration, in such roles as deputy court administrator or clerks of court, it is likely that very few had in fact completed these programs prior to entering this field. Thus, educational credentials, in the form of completion of specialized programs in judicial administration, have not yet apparently been required as a condition of qualification for the large majority of court administration positions.

In contrast, a large proportion of court administrators have participated in specialized training or educational programs since entering the field of court administration. A total of 261 court administrators, or 79 percent of all respondents, reported that they had attended workshops or other special training sessions subsequent to entering court administration work. As shown below, the major sources of this

training were the Institute of Court Management and the training programs sponsored by state agencies such as the State Court Administrator's or the State Judicial Conference. Other major providers of such training were the National Association of Trial Court Administrators and university-related centers for continuing education.

LEAA funding, including block grants, was the most important source of financial assistance for attendance at these programs. Over three-fourths (77 percent) of the administrators who had received in-service training, reported this had been financed by LEAA funds at least in part. Nearly one-half also had received financial assistance from their own agency for such training. A relatively small proportion (16 percent) reported that they had financed their own attendance. It is likely, moreover, that these responses understate, to some extent, the relative contribution of LEAA to support of court administration training since they do not take into account indirect LEAA financial support through institutional grants or through funding assistance to court administration offices.

E. Findings and Recommendations

The adequacy of current staffing of court administrator positions, and of the training and education of incumbents, can only be assessed in the context of their roles and responsibilities. From our summary of positions performed by court administrators, it is evident that at least two—and probably more—distinct categories of positions are included within the scope of the "court administrator" position. The first category, typified by many state court systems administrators and by some administrators of large trial courts or groups of courts, exercises a broad range of managerial responsibilities, under the general policy supervision of the chief judicial officer of the court or court system. These can include such functions as planning, organizing, staffing, directing, controlling and coordinating the court and its non-judicial personnel. The second category of administrators has more restricted responsibilities for such functions as calendaring, record keeping and statistical reporting, as well as for staff functions, including supervision of non-judicial personnel, accounting, space and equipment or data processing. The key distinction between the two positions is the degree of control over resources and personnel, and the ability to initiate or implement major changes.

TABLE VI–8

Percent of Court Administrators Attending Training Programs, by Source

Source	Percent of Total Court Administrators*	Percent of Court Administrators With Training*
Institute for Court Management	43	55
State Court Administrator's Office	33	42
State Judicial Conference	22	28
National Association of Trial Court Administrators	22	28
University-related Centers for Continuing Education	19	25
National College of the State Judiciary	7	8
Institute for Judicial Administration	4	5
Other	16	20
Number of reports	(330)	(261)

* Percentages do not add to 100 since respondents may have attended more than one program.

Source: NMS Court Administrators Survey, 1976.

The lack of sufficient delegated authority for a broader managerial role has been identified as one of the important limitations of the current court administrator position in many courts. When court administrators were queried by NMS as to whether there were any specific areas in which insufficient authority was delegated to effectively administer the courts under their supervision, 30 percent of all respondents reported that this was a problem for them, and identified a range of difficulties, generally associated with lack of clearly defined authority over certain categories of non-judicial personnel or functions.

The educational qualifications for the court administrator position, and the amount and type of in-service training required, will clearly vary, depending upon the scope of his authority and responsibilities. Although these responsibilities will always be broader for the state court system administrators than those at the trial court level, there appears to be wide variation among the latter category, as illustrated by the results of our surveys and field visits. Those courts which have assigned a limited rule to their court administrators may have done so for a variety of reasons, including reluctance of the judiciary to relinquish some of their own authority and control over court management. In part, however, it may be assumed that lack of professional qualifications of personnel appointed to court administrator positions has been a contributing factor. To this extent, a strengthening of existing training and education programs—as well as of court administrator selection criteria—can contribute to enhancement of the court management function.

Based on the premise that the desirable goal is to "professionalize" the court administration function, by providing current and future administrators with a broad range of managerial, as well as technical or administrative skills, the following priorities for training and academic assistance are suggested.

1. *Pre-service court administrator programs.* Our survey findings have indicated that current court administrators have very diverse educational and work experience backgrounds and have equally varied preferences concerning the most desirable academic preparation for future entrants into this occupation. The major preferences are, however, for either a law school degree or for a major in public administration. In either case, existing undergraduate programs provide little scope for specialization in the field of judicial administration. Incumbents in court administration positions have mainly acquired their specialized knowledge and skills through on-the-job experience and in-service training programs. On-the-job training, however, is clearly insufficient if the objective of training is to promote implementation of new policies and procedures, rather than to perpetuate existing practice. Reliance upon in-service training, alone, implies a substantial loss of time between assumption of responsibilities and acquisition of needed knowledge and skills. Moreover, workload constraints often limit availability of key personnel for courses lasting more than a few days, particularly in small agencies.

These considerations point to the need for support of graduate level residential judicial administration programs for personnel planning to enter court administration careers as well as for those employed in more junior-level court positions. In view of the diversified undergraduate background of prospective entrants into such programs, course offerings and curricula should be adapted to individual needs. Thus, lawyers will probably require greater emphasis upon basic management courses, whereas public administration majors will require more intensive study in such subjects as court jurisdiction or administrative law.

2. *In-service court administrator training.* The traditional objectives of in-service training programs are to enable practitioners to maintain professional competence in their field by keeping them informed of new methods and approaches, as well as to remedy any deficiences in their basic skills. The latter objective has understandably, been given greater emphasis, in view of the limited academic preparation of most incumbents in the field of judicial administration.

One of the critical needs, suggested by our survey findings, is to upgrade the technical skills of many trial court administrators for performance of their most urgent operational responsibilities. These include such tasks as the development of improved methods of identifying backlog or delayed cases, improvements in court statistics and records, and improved methods of calendaring—all of which were cited by 40 percent or more of court administrators as in need of change in their courts, or court systems. In addition, our review of the contents of existing residential programs, such as these offered by the Institute for Court Management, suggests the need for increased emphasis on certain managerial skills, notably in the techniques for program review and evaluation. The process of "change making" requires a better appreciation of research and evaluation methodology than is common today. The latter may not be immediately required by many administrators with limited current management responsibilities, but can help to qualify them for a broader management role, in the future.

In addition, the resource limitations of any comprehensive residential program indicate the need for supplementation, through expanded regional training services, on more advanced management topics than are offered in the basic residential program. The present ICM regional programs are largely aimed at those administrators who do not, or cannot, attend the residential program. While these are needed, they should be supplemented by efforts to provide more advanced training for ICM graduates.

3. *Judicial training and orientation on court administrators.* The preceding recommendations have focused on the training needs of the professional court administrator. There is an equally important requirement for training of judicial personnel who are responsible for selection and policy supervision of court administrators, as well as for those exercising direct administrative responsibilities. One of the major barriers to more effective utilization of professional court administrators, in many jurisdictions, is the lack of familiarity by the judiciary with their potential. In view of the extensive support by LEAA of judicial training programs, it is recommended these programs include seminars or workshops devoted specifically to the court administrator role, to assist judges in properly defining position responsibilities and in development of appropriate selection criteria.

NOTES AND REFERENCES

1. National Advisory Commission, *Courts*, Chapter 9.

2. Ad Hoc Committee on Grievance Procedures of the Association of the Bar of New York. Report on the Grievance (1976); B. Agala, "Report to Federal Judicial Center on Admissions and Discipline of Attorneys in Federal District Courts." (August 1974). See also, S. Kranty *Et. al*, *Right to Counsel in Criminal Cases: The Mandate of Argersinger v. Hamilin* (Bullinger 1975).
3. National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, p. 178. Although an office of state court administrators was established in Connecticut in 1932, the first appointment to that position, in that state, was in 1967.
4. NMS Final Report, Volume VIII, p. 655.
5. NMS Final Report, Volume VIII, pp. 665–666.
6. Based on data in Council of State Governments *Judicial Administration: Education and Training Programs* 1975 and Collateral Sources.

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